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# REVISED CODES OF MONTANA

## VOLUME 5

### Part 1

### 1971 Cumulative Pocket Supplement

#### *Containing*

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE  
LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF  
REPLACEMENT VOLUME 5 (PART 1) OF  
THE 1947 REVISED CODES

#### AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 5  
(PART 1) THROUGH VOLUME 478, PACIFIC  
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# REVISED CODES OF MONTANA

VOLUME 2

Part 1

1971 Cumulative Pocket Supplement

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# MONTANA REVISED CODES

## TITLE 76—SOIL AND WATER CONSERVATION

### Chapter

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### CHAPTER 1—STATE CONSERVATION DISTRICTS LAW

#### Section

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**76-101. Short title.** This act may be known and cited as “the State Conservation Districts Law.”

**History:** En. Sec. 1, Ch. 72, L. 1939;  
amd. Sec. 1, Ch. 73, L. 1961; amd. Sec. 1,  
Ch. 431, L. 1971.

#### Amendments

The 1971 amendment deleted “Soil and Water” before “Conservation.”

**76-103. Definitions.** Wherever used or referred to in this act, unless a different meaning clearly appears from the context:

(1) “District” or “conservation district” means a governmental subdivision of this state, and a public body corporate and politic, organized in accordance with the provisions of this act, for the purposes, with the powers, and subject to the restrictions hereinafter set forth;

(2) \* \* \* [Same as parent volume.]

(3) “Commission” or “state conservation commission” means the agency created in section 76-104;

(4) \* \* \* [Same as parent volume.]

(5) “Nominating petition” means a petition filed under the provisions of section 76-106 to nominate candidates for the office of supervisor of a conservation district;

(6) to (9) \* \* \* [Same as parent volume.]

(10) “Land occupier” or “occupier of land” includes any person, firm, corporation, municipality or other entity who shall hold title to, or shall be in possession of, any lands lying within a district organized under the provisions of this act, whether as owner, lessee, renter, tenant, or otherwise;

(11) "Due notice" means notice published at least twice, with an interval of at least fourteen (14) days between the two (2) publication dates, in a newspaper or other publication of general circulation within the proposed area, or by posting at a reasonable number of conspicuous places within the appropriate area, such posting to include, where possible, posting at public places where it may be customary to post notices concerning county or municipal affairs generally. At any hearing held pursuant to such notice, at the time and place designated in such notice, adjournment may be made from time to time without the necessity of renewing such notice for such adjourned dates.

(12) "Qualified elector" means a qualified elector as defined in title 23, R.C.M. 1947.

**History:** En. Sec. 3, Ch. 72, L. 1939; amd. Sec. 2, Ch. 73, L. 1961; amd. Sec. 1, Ch. 146, L. 1967; amd. Sec. 2, Ch. 431, L. 1971.

#### Amendments

The 1967 amendment inserted "municipality or other entity" after "corporation" in subdivision (10).

The 1971 amendment deleted "soil and water" before "conservation" in subdivision (1); substituted "commission" for "committee" twice and deleted "soil" before "conservation" in subdivision (3); deleted "soil" before "conservation" in subdivision (5); added subdivision (12); and made a minor change in style.

**76-104. State conservation commission.** A. There is hereby established, to serve as an agency of the state, and to perform the functions conferred upon it in this act, the state conservation commission. The state conservation commission shall consist of seven (7) members. The following shall serve as members of the commission: The director of the state agricultural experiment station, the director of the state extension service; and the commissioner of the state department of agriculture. Four (4) members to be appointed by the governor from a list of twenty (20) submitted by the Montana association of conservation districts, at the next annual meeting of such association. In the formation of such list to be submitted to the governor, nominations shall be made by the convention and each district shall have one (1) vote. No person shall be eligible for the selection as a member unless he is at the time of selection or shall have been at some previous time a conservation district supervisor. From the list of twenty (20) names submitted the governor shall appoint one (1) person to serve a one-year term, one (1) person to serve a two-year term, one (1) person to serve a three-year term, and one (1) person to serve a four-year term; thereafter each year a list of five (5) names will be compiled in the same manner and submitted to the governor, from which list the governor shall appoint one (1) person to serve a four (4) year term on the state conservation commission. In the event a vacancy should occur for any reason among the members a successor shall be appointed by the governor to fill the unexpired term, which successor must be chosen from the last previous list submitted to the governor. The commission may invite the secretary of agriculture of the United States of America to appoint one (1) person to serve with the above-mentioned members as a nonvoting member of the commission. The commission shall keep a record of its official actions, shall adopt a seal, which seal shall be judicially noticed, and may perform such acts, hold

such public hearings, and promulgate such rules and regulations as may be necessary for the execution of its functions under this act.

B. The state conservation commission may employ an administrative officer and such other agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties, and compensation. The commission may call upon the state for such legal services as it may require, or may employ its own counsel and legal staff. It shall have authority to delegate to its chairman, to one or more of its members, or to one or more agents or employees, such powers and duties as it may deem proper. Upon request of the commission for the purpose of carrying out any of its functions, the supervising officer of any state agency or of any state institution of learning shall, in so far as may be possible under available appropriations, and having due regard to the needs of the agency to which the request is directed, assign or detail to the commission members of the staff or personnel of such agency or institution of learning, and make such special reports, surveys, or studies as the commission may request.

C. The commission shall annually elect a chairman from its own membership. State commissioners shall continue as members of the state commission so long as they shall retain the offices by virtue of which they shall be serving on the commission. The appointed members shall hold office for four (4) years and their term of office shall be concurrent with the governor. A majority of the commission shall constitute a quorum, and the concurrence of a majority in any matter within their duties shall be required for its determination. Ex officio members of the commission shall receive no compensation for their services on the commission. Other members of the commission shall receive twenty dollars (\$20) per day while on duty. All members of the state commission shall be entitled to expenses, including traveling expenses, necessarily incurred in the discharge of their duties on the commission. The commission shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the account of receipts and disbursements.

D. In addition to the duties and powers hereinafter conferred upon the state soil conservation commission, it shall have the following duties and powers:

(1) To offer such assistance as may be appropriate to the supervisors of conservation districts, organized as provided hereinafter, in the carrying out of any of their powers and programs;

(2) \* \* \* [Same as parent volume.]

(3) To co-ordinate the programs of the several conservation districts organized hereunder so far as this may be done by advice and consultation;

(4) \* \* \* [Same as parent volume.]

(5) To disseminate information throughout the state concerning the activities and programs of the conservation districts organized hereunder,



and to encourage the formation of such districts in areas where their organization is desirable.

**History:** En. Sec. 4, Ch. 72, L. 1939; amd. Sec. 1, Ch. 21, L. 1951; amd. Sec. 1, Ch. 47, L. 1967; amd. Sec. 1, Ch. 291, L. 1969; amd. Sec. 3, Ch. 431, L. 1971.

#### Amendments

The 1967 amendment substituted "twenty dollars" for "five dollars" in subsection C.

The 1969 amendment, in the fourth sentence of subsection A, deleted "farmer" before "members" near the beginning, substituted "Montana association of soil and water conservation districts" for "Montana soil conservation districts association," deleted "farmer" before "member" and "members" in the sixth and eighth sentences, respectively; in subsection B, deleted a former fourth sentence reading, "It shall be supplied with suitable office accommodations at the state college at Bozeman, Montana, and shall be furnished with the necessary supplies and equipment"; and, in the third sentence in subsection C, deleted "farmer" before "members."

The 1971 amendment substituted "state conservation commission" for "state soil conservation committee" in four instances; substituted "commission" for "committee" throughout the section; deleted "at Bozeman, Montana" after "experiment station" and after "extension service" in the third sentence of subsection A; deleted "soil and water" before "conservation districts" in the fourth sentence of subsection A; deleted "soil" before "conservation" in the sixth sentence of subsection A and in subdivisions D (1), (3), and (5); substituted "commissioners" for "committeemen" in the second sentence of subsection C; and made a minor change in style.

#### Cross-References

Committee continued in advisory capacity, sec. 82A-1507.

Committee functions transferred to division of conservation districts, sec. 82A-1506.

**76-105. Creation of conservation districts.** A. Any ten (10) qualified electors within the limits of the territory proposed to be organized into a district may file a petition with the state conservation commission asking that a conservation district be organized to function in the territory described in the petition. Such petition shall set forth:

- (1) The proposed name of said district;
- (2) That there is need, in the interest of the public health, safety, and welfare, for a conservation district to function in the territory described in the petition;
- (3) \* \* \* [Same as parent volume.]
- (4) A request that the state conservation commission duly define the boundaries for such district; that a referendum be held within the territory so defined on the question of the creation of a conservation district in such territory; and that the commission determine that such a district be created.

Where more than one petition is filed covering parts of the same territory, the state conservation commission may consolidate all or any part of such petitions.

B. Within thirty (30) days after such a petition has been filed with the state conservation commission, it shall cause due notice to be given of a proposed hearing upon the question of the desirability and necessity, in the interest of the public health, safety, and welfare, of the creation of such district, upon the question of the appropriate boundaries to be assigned to such district, upon the propriety of the petition and other proceedings taken under this act, and upon all questions relevant to such inquiries. All qualified electors within the limits of the territory



described in the petition, and of lands within any territory considered for addition to such described territory, and all other interested parties, shall have the right to attend such hearings and to be heard. If it shall appear upon the hearing that it may be desirable to include within the proposed district territory outside of the area within which due notice of the hearing has been given, the hearing shall be adjourned and due notice of further hearing shall be given throughout the entire area considered for inclusion in the district, and such further hearing held. After such hearing, if the commission shall determine, upon the facts presented at such hearing and upon such other relevant facts and information as may be available, that there is need, in the interest of the public health, safety and welfare, for a conservation district to function in the territory considered at the hearing, it shall make and record such determination, and shall define, by metes and bounds or by legal subdivisions, the boundaries of such district. In making such determinations and in defining such boundaries, the commission shall give due weight and consideration to the topography of the area considered and of the state, the composition of soils therein, the distribution of erosion, the prevailing land-use practices, the desirability and necessity of including within the boundaries the particular lands under consideration and the benefits such lands may receive from being included within such boundaries, the relation of the proposed area to existing watersheds and agricultural regions, and to other conservation districts already organized or proposed for organization under the provisions of this act, and such other physical, geographical, and economic factors as are relevant, having due regard to the legislative determination set forth in section 76-102. The territory to be included within such boundaries need not be contiguous. If the commission shall determine after such hearing, after due consideration of the said relevant facts, that there is no need for a conservation district to function in the territory considered at the hearing, it shall make and record such determination and shall deny the petition. After six (6) months shall have expired from the date of the denial of any such petition, subsequent petitions covering the same or substantially the same territory may be filed as aforesaid and new hearing held and determinations made thereon.

C. After the commission has made and recorded a determination that there is need, in the interest of the public health, safety, and welfare, for the organization of a district in a particular territory and has defined the boundaries thereof, it shall consider the question whether the operation of a district within such boundaries with the powers conferred upon conservation districts in this act is administratively practicable and feasible. To assist the commission in the determination of such administrative practicability and feasibility, it shall be the duty of the commission, within a reasonable time after entry of the finding that there is need for the organization of the proposed district and the determination of the boundaries thereof, to hold a referendum within the proposed district upon the proposition of the creation of the district, and to cause due notice of such referendum to be given. The question shall be submitted by ballots upon which the words "For creation of a conservation

district of the lands below described and lying in the county(ies) of \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_" and "Against creation of a conservation district of the lands below described and lying in the county(ies) of \_\_\_\_\_ and \_\_\_\_\_" shall appear, with a square before each proposition and a direction to insert an "X" mark in the square before one or the other of said propositions as the voter may favor or oppose creation of such district. The ballot shall set forth the boundaries of such proposed district as determined by the commission. All qualified electors within the boundaries of the territory, as determined by the state conservation commission, shall be eligible to vote in such referendum.

D. The commission shall pay all expenses for the issuance of such notices and the conduct of such hearings and referenda, and shall supervise the conduct of such hearings and referenda. It shall issue appropriate regulations governing the conduct of such hearings and referenda, and providing for the registration prior to the date of the referendum of all eligible voters, or prescribing some other appropriate procedure for the determination of those eligible as voters in such referendum. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

E. The commission shall publish the result of such referendum and shall thereafter consider and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible. If the commission shall determine that the operation of such district is not administratively practicable and feasible, it shall record such determination and deny the petition. If the commission shall determine that the operation of such district is administratively practicable and feasible, it shall record such determination and shall proceed with the organization of the district in the manner hereinafter provided. In making such determination the commission shall give due regard and weight to the attitudes of the qualified electors within the defined boundaries, the number of qualified electors eligible to vote in such referendum who shall have voted, the proportion of the votes cast in such referendum in favor of the creation of the district to the total number of votes cast, the approximate wealth and income of the qualified electors of the proposed district, the probable expense of carrying on erosion-control operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the legislative determinations set forth in section 76-102; provided, however, that the commission shall not have authority to determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible unless a majority of the votes cast in the referendum upon the proposition of creation of the district shall have been cast in favor of the creation of such district.

F. If the commission shall determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible, it shall appoint two (2) supervisors to act with the

three (3) supervisors elected as provided hereinafter, as the governing body of the district. Such district shall be a governmental subdivision of this state and a public body corporate and politic, upon the taking of the following proceedings:

The two (2) appointed supervisors shall present to the secretary of state an application signed by them, which shall set forth (and such application need contain no detail other than the mere recitals): (1) That a petition for the creation of the district was filed with the state conservation commission pursuant to the provisions of this act, and that the proceedings specified in this act were taken pursuant to such petition; that the application is being filed in order to complete the organization of the district as a governmental subdivision and a public body, corporate and politic, under this act; and that the commission has appointed them as supervisors; (2) the name and official residence of each of the supervisors, together with a certified copy of the appointments evidencing their right to office; (3) the term of office of each of the supervisors; (4) the name which is proposed for the district; and (5) the location of the principal offices of the supervisors of the district. The application shall be subscribed and sworn to by each of the said supervisors before an officer authorized by the laws of this state to take and certify oaths, who shall certify upon the application that he personally knows the supervisors and knows them to be the officers as affirmed in the application, and that each has subscribed thereto in the officer's presence. The application shall be accompanied by a statement by the state conservation commission, which shall certify (and such statement need contain no detail other than the mere recitals) that a petition was filed, notice issued, and hearing held as aforesaid; that the commission did duly determine that there is need, in the interest of the public health, safety, and welfare, for a conservation district to function in the proposed territory and did define the boundaries thereof; that notice was given and a referendum held on the question of the creation of such district, and that the result of such referendum showed a majority of the votes cast in such referendum to be in favor of the creation of the district; that thereafter the commission did duly determine that the operation of the proposed district is administratively practicable and feasible; the said statement shall set forth the boundaries of the district as they have been defined by the commission.

The secretary of state shall examine the application and statement and, if he finds that the name proposed for the district is not identical with that of any other conservation district of this state or so nearly similar as to lead to confusion or uncertainty, he shall receive and file them and shall record them in an appropriate book of record in his office. If the secretary of state shall find that the name proposed for the district is identical with that of any other conservation district of this state, or so nearly similar as to lead to confusion and uncertainty, he shall certify such fact to the state conservation commission, which shall thereupon submit to the secretary of state a new name for the said district, which shall not be subject to such defects. Upon receipt of such new name, free of such defects, the secretary of state shall record



the application and statement, with the name so modified, in an appropriate book of record in his office. When the application and statement have been made, filed, and recorded, as herein provided, the district shall constitute a governmental subdivision of this state and a public body corporate and politic. The secretary of state shall make and issue to the said supervisors without cost a certificate, under the seal of the state, of the due organization of the said district, and shall record such certificate with the application and statement. The boundaries of such district shall include the territory as determined by the state conservation commission as aforesaid, but in no event shall they include any area included within the boundaries of another conservation district organized under the provisions of this act.

G. After six (6) months shall have expired from the date of entry of a determination by the state conservation commission that operation of a proposed district is not administratively practicable and feasible, and denial of a petition pursuant to such determination, subsequent petitions may be filed as aforesaid and action taken thereon in accordance with the provisions of this act.

H. Petitions for including additional territory within an existing district may be filed with the state conservation commission, and the proceedings herein provided for in the case of petitions to organize a district shall be observed in the case of petitions for such inclusion. The commission shall prescribe the form for such petitions, which shall be as nearly as may be in the form prescribed in this act for petitions to organize a district. Where the total number of qualified electors in the area proposed for inclusion shall be less than ten (10), the petition may be filed when signed by a majority of the qualified electors of such area, and in such case no referendum need be held. In referenda upon petitions for such inclusion, all qualified electors within the proposed additional area shall be eligible to vote.

(I). \* \* \* [Same as parent volume.]

**History:** En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971.

#### Amendments

The 1971 amendment substituted "qualified electors" for "occupiers of land lying" in the first sentence of subsection A and the last sentence of subsection H, for "occupiers of lands lying" in the last sentence of subsection C and the last sentence of subsection E, for "occupiers of land" in the second sentence of subsection B, for "land occupiers" in the last sentence of subsection E and the

third sentence of subsection H; substituted "state conservation commission" for "state soil conservation committee" throughout the section; substituted "commission" for "committee" throughout the section; deleted "soil and water" before "conservation district" throughout the section; substituted "majority" for "sixty-five (65) per cent" in the proviso to subsection E and in the last sentence of the second paragraph of subsection F; deleted from the end of subsection C a former last sentence reading, "Only such land occupiers shall be eligible to vote"; and made minor changes in phraseology.

**76-106. Election of supervisors for each district.** Within thirty (30) days after the date of issuance by the secretary of state of a certificate of organization of a conservation district, nominating petitions may be filed with the state conservation commission to nominate candidates for supervisors of such districts. The commission shall have authority to extend the time within which nominating petitions may be filed. No such



nominating petition shall be accepted by the commission unless it shall be subscribed by ten (10) or more qualified electors within the boundaries of such district. Qualified electors may sign more than one (1) such nominating petition to nominate more than one (1) candidate for supervisor. The commission shall give due notice of an election to be held for the election of three (3) supervisors for the district. The names of all nominees on behalf of whom such nominating petitions have been filed within the time herein designated, shall be printed, arranged in the alphabetical order of the surnames, upon ballots, with a square before each name and a direction to insert an "X" mark in the square before any three (3) names to indicate the voter's preference. All qualified electors within the district shall be eligible to vote in such election. The three (3) candidates who shall receive the largest number, respectively, of the votes cast in such election shall be the elected supervisors for such district. The commission shall pay all the expenses of such election, shall supervise the conduct thereof, shall prescribe regulations governing the conduct of such election and the determination of the eligibility of votes therein, and shall publish the results thereof.

**History:** En. Sec. 6, Ch. 72, L. 1939; amd. Sec. 5, Ch. 431, L. 1971.

#### Amendments

The 1971 amendment deleted "soil" before "conservation district" in the first sentence; substituted "state conservation commission" for "state soil conservation committee" in the first sentence; substi-

tuted "commission" for "committee" throughout the section; substituted "qualified electors" for "occupiers of land lying" in the third and seventh sentences, and for "land occupiers" in the fourth sentence; deleted the former eighth sentence reading, "Only such land occupiers shall be eligible to vote"; and made minor changes in style.

**76-107. Appointment, qualifications and tenure of supervisors.** The governing body of the district shall consist of five (5) or seven (7) supervisors, elected or appointed as provided herein.

The supervisors shall annually elect a chairman from their members. The term of office of each supervisor shall be three (3) years, except that the supervisors who are first appointed shall be designated to serve for terms of one (1) and two (2) years, respectively, from the date of their appointment. A supervisor shall hold office until his successor has been elected and has qualified. Any vacancy occurring in the office of supervisor shall be filled by appointment by the remaining supervisors until the next regular election, when a successor shall be elected to serve the unexpired term. A majority of the supervisors shall constitute a quorum and the concurrence of a majority in any matter within their duties shall be required for its determination. A supervisor shall receive no compensation for his services, but he shall be entitled to expenses, including traveling expenses, necessarily incurred in the discharge of his duties.

The supervisors may employ a secretary and such other officers, agents, and employees, permanent and temporary, as they may require, and shall determine their qualifications, duties and compensation. The supervisors may call upon the attorney general of the state for such legal services as they may require, or may employ their own counsel and legal staff. The supervisors may delegate to their chairman, to one (1) or more supervisors, or to one (1) or more agents or employees, such powers and

duties as they may deem proper. The supervisors shall furnish to the state conservation commission, copies of such ordinances, rules, regulations, orders, contracts, forms, and other documents as they shall adopt or employ, and such other information concerning their activities as may be required in the performance of its duties under this act.

The supervisors shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings, and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements. Any supervisor may be removed by the state conservation commission upon notice and hearing, for neglect of duty or malfeasance in office, but for no other reason.

The supervisors may invite the legislative body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the supervisors of the district on all questions of program and policy which may affect the property, water supply, or other interests of such municipality or county.

**History:** En. Sec. 7, Ch. 72, L. 1939; amd. Sec. 1, Ch. 4, L. 1959; amd. Sec. 2, Ch. 146, L. 1967; amd. Sec. 6, Ch. 431, L. 1971.

#### Amendments

The 1967 amendment inserted "if there are no incorporated municipalities within the boundaries of said district" in the first paragraph; inserted second and third paragraphs reading:

"In all cases where the boundaries of such soil and water conservation district includes any incorporated municipality or municipalities, said board of supervisors, in addition to said five (5) elected supervisors, shall consist of two (2) appointed supervisors, making a total of seven (7) supervisors in such districts. The two (2) appointed supervisors must be residents of the municipalities within the district. The legislative bodies of the incorporated municipalities within the district shall, after consultation with the elected supervisors,

appoint the two (2) additional supervisors. The term of office of the appointed supervisors shall be three (3) years.

"Where there are more than two (2) incorporated municipalities within a district then the two (2) appointed supervisors shall represent all the municipalities and urban interests in the district, and no municipality shall have more than one (1) appointed supervisor residing therein"; and inserted "an elected" before "supervisor" in the third and fourth sentences of the fourth paragraph, now the second paragraph.

The 1971 amendment deleted all the insertions made by the 1967 amendment; inserted "or seven (7)" and "or appointed" in the first paragraph; substituted "state conservation commission" for "state soil conservation committee" in the last sentences of the third and fourth paragraphs; and made minor changes in style and phraseology.

**76-108. Powers of districts and supervisors.** A. A conservation district organized under the provisions of this act shall constitute a governmental subdivision of this state, and a public body corporate and politic, exercising public powers, and such district, and the supervisors thereof, shall have the following powers, in addition to others granted in other sections of this act:

(1) \* \* \* [Same as parent volume.]

(2) To conduct soil, vegetation, and water resources conservation projects on lands within the districts upon obtaining the consent of the owner of such lands or the necessary rights or interest in such land;

(3) To carry out preventive and control measures and works of improvement for flood prevention and the conservation, development, utilization

tion, and disposal of water within the district, including, but not limited to, engineering operations, range management, methods of cultivation, the growing of vegetation, changes in use of land, and the measures listed in subsection C of section 76-102, R. C. M. 1947, on lands owned or controlled by this state or any of its agencies with the co-operation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the occupier of such lands or the necessary rights or interests in such lands;

(4) and (5). \* \* \* [Same as parent volume.]

(6) To make available on such terms as it shall prescribe, to land occupiers within the district, agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings, and such other material or equipment, as will assist such land occupiers to carry on operations upon their lands for the conservation of soil resources and for the prevention and control of soil erosion, and for flood prevention and the conservation, development, utilization, and disposal of water;

(7) to (11) \* \* \* [Same as parent volume.]

(12) To borrow money and incur indebtedness and to issue bonds or other evidence of such indebtedness; also to refund or retire an indebtedness or lien that may exist against the district or property thereof;

(13) To fix and revise as necessary and collect rates, fees, tolls, rents, or other charges for the use of or for services, facilities and materials furnished or provided. Revenues from these sources may be expended in carrying out the purposes and provisions of this act;

(14) To cause taxes to be levied in the same manner provided for in Title 76, chapter 2, R. C. M. 1947, for the purpose of paying any obligation of the district and to accomplish the purposes of this act in the manner herein provided.

B. No provisions with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to a district organized hereunder unless the legislature shall specifically so state.

**History:** En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971.

#### Amendments

The 1969 amendment designated the first paragraph as subsection A; rewrote subdivision (2), for previous text of which see parent volume; in subdivision (3), in-

serted "R. C. M. 1947" after "section 76-102" and substituted "or" for "of" before "the necessary rights"; in subdivision (6), inserted "and" before "disposal of water"; inserted present subdivisions (12) through (14); and designated former subdivision (12) as subsection B.

The 1971 amendment deleted "soil" before "conservation" at the beginning of subsection A.

**76-109. Adoption of land-use regulations.** (A) The supervisors of any district shall have authority to formulate regulations governing the use of lands within the district in the interest of conserving soil and water resources and preventing and controlling erosion. The supervisors may conduct such public meetings and public hearings upon tentative regulations as may be necessary to assist them in this work. The supervisors shall not have authority to enact such land-use regulations into law until after they shall have caused due notice to be given of their intention to conduct a referendum for submission of such regulations to the qualified



electors within the boundaries of the district for their indication of approval or disapproval of such proposed regulations, and until after the supervisors have considered the result of such referendum.

(B) The proposed regulations shall be embodied in a proposed ordinance. Copies of such proposed ordinance shall be available for the inspection of all eligible voters during the period between publication of such notice and the date of the referendum. The notices of the referendum shall recite the contents of such proposed ordinance, or shall state where copies of such proposed ordinance may be examined. The question shall be submitted by ballots, upon which the words "For approval of proposed ordinance No. \_\_\_\_\_, prescribing land-use regulations for conservation of soil and prevention of erosion" and "Against approval of proposed ordinance No. \_\_\_\_\_, prescribing land-use regulations for conservation of soil and prevention of erosion" shall appear, with a square before each proposition and a direction to insert and [an] "X" mark in the square before one (1) or the other of said propositions as the voter may favor or oppose approval of such proposed ordinance. The supervisors shall supervise such referendum, shall prescribe appropriate regulations governing the conduct thereof, and shall publish the result thereof. All qualified electors within the district shall be eligible to vote in such referendum. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

(C) The supervisors shall not have authority to enact such proposed ordinance into law unless a majority of the votes cast in such referendum shall have been cast for approval of the said proposed ordinance. The approval of the proposed ordinance by a majority of the votes cast in such referendum shall not be deemed to require the supervisors to enact such proposed ordinance into law. Land-use regulations prescribed in ordinances adopted pursuant to the provisions of this section by the supervisors of any district shall have the force and effect of law in the said district and shall be binding and obligatory upon all occupiers of lands within such district.

(D) Any qualified elector within such district may at any time file a petition with the supervisors asking that any or all of the land-use regulations prescribed in any ordinance adopted by the supervisors under the provisions of this section shall be amended, supplemented, or repealed. Land-use regulations prescribed in any ordinance adopted pursuant to the provisions of this section shall not be amended, supplemented or repealed, except in accordance with the procedure prescribed in this section for adoption of land-use regulations. Referenda on adoption, amendment, supplementation, or repeal of land-use regulations shall not be held more often than once in six (6) months.

The regulations to be adopted by the supervisors under the provisions of this section may include:

1. to 4. \* \* \* [Same as parent volume.]
5. Provisions for such other means, measures, operations, and programs as may assist conservation of soil and water resources and prevent



or control erosion in the district, having due regard to the legislative findings set forth in section 76-102.

The regulations shall be uniform throughout the territory comprised within the district except that the supervisors may classify the lands within the district with reference to such factors as soil type, degree of slope, degree of erosion threatened or existing, grazing and cropping programs, and tillage and range practices in use, and other relevant factors and may provide regulations varying with the type or class of land affected, but uniform as to all lands within each class or type. Copies of land-use regulations adopted under the provisions of this section shall be printed and made available to all occupiers of land within the district.

**History:** En. Sec. 9, Ch. 72, L. 1939; amd. Sec. 8, Ch. 431, L. 1971.

#### Compiler's Notes

The compiler has inserted the bracketed word "an" in the fourth sentence of subsection (B).

#### Amendments

The 1971 amendment substituted "water" for "soil" in the first sentence of subsection (A); deleted "soil" before "erosion" at the end of the first sentence of subsection (A); substituted "qualified electors" for "occupiers of lands lying" in the

last sentence of subsection (A), for "occupiers of lands within" in the sixth sentence of subsection (B), and for "occupier of land" in the first sentence of subsection (D); deleted the former seventh sentence of subsection (B) reading, "Only such land occupiers shall be eligible to vote"; inserted "and water" before "resources" in subdivision (D) 5; deleted "soil" before "erosion" in subdivision (D) 5; deleted "lying" after "occupiers of land" in the last sentence of the final paragraph of subsection (D); and made a minor change in punctuation.

### 76-110. Performance of work under the regulations by the supervisors.

(1) \* \* \* [Same as parent volume.]

(2) Where the supervisors of any district shall find that any of the provisions of land-use regulations prescribed in any ordinance adopted in accordance with the provisions of section 76-109 are not being observed on particular lands, and that such nonobservance tends to increase erosion on such lands, and is interfering with the prevention or control of erosion on other lands within the district, the supervisors may present to the district court of the county in which the lands of the defendant may lie, a petition, duly verified, setting forth the adoption of the ordinance prescribing land-use regulations, the failure of the defendant to observe such regulations, and to perform particular work, operations, or avoidances as required thereby, and that such nonobservances tends to increase erosion on such lands and is interfering with the prevention or control of erosion on other lands within the district, and praying the court to require the defendant to perform the work, operations, or avoidances within a reasonable time and to order that if the defendant shall fail so to perform the supervisors may go on the land, perform the work or other operations or otherwise bring the condition of such lands into conformity with the requirements of such regulations, and recover the costs and expenses thereof, with interest, from the defendant.

(3) \* \* \* [Same as parent volume.]

(4) The court may dismiss the petition; or it may require the defendant to perform the work, operations, or avoidances, and may provide that upon the failure of the defendant to initiate such performance within

the time specified in the order of the court, and to prosecute the same to completion with reasonable diligence, the supervisors may enter upon the lands involved and perform the work or operations or otherwise bring the condition of such land into conformity with the requirements of the regulations and recover the costs and expenses thereof, with interest at the rate of five per cent (5%) a year from the defendant. In all cases where the person in possession of lands, who shall fail to perform such work, operations, or avoidances shall not be the owner, the owner of such lands shall be joined as party defendant.

(5) The court shall retain jurisdiction of the case until after the work has been completed. Upon completion of such work pursuant to such order of the court the supervisors may file a petition with the court, a copy of which shall be served upon the defendant in the case, stating the costs and expenses sustained by them in the performance of the work and praying judgment therefor with interest. The court shall have jurisdiction to enter judgment for the amount of such costs and expenses, with interest at the rate of five per cent (5%) a year until paid, together with the costs of suit, including a reasonable attorney's fee to be fixed by the court.

**History:** En. Sec. 10, Ch. 72, L. 1939; amd. Sec. 9, Ch. 431, L. 1971.

#### **Amendments**

The 1971 amendment deleted "land occupier" after "the failure of the defendant"

near the middle of subsection (2); substituted "defendant" for "occupier of such land" at the end of subsection (2) and at the end of the first sentence of subsection (4); and made minor changes in phraseology.

**76-111. Board of adjustment.** A. Where the supervisors of any district organized under the provisions of this act shall adopt an ordinance prescribing land-use regulations in accordance with the provisions of section 76-109, they shall further provide by ordinance for the establishment of a board of adjustment. Such board of adjustment shall consist of three (3) members, each to be appointed for a term of three (3) years, except that the members first appointed shall be appointed for terms of 1, 2, and 3 years, respectively. The members of each such board of adjustment shall be appointed by the state conservation commission, with the advice and approval of the supervisors of the district for which such board has been established, and shall be removable, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other reason, such hearing to be conducted jointly by the state conservation commission and the supervisors of the district. Vacancies in the board of adjustment shall be filled in the same manner as original appointments and shall be for the unexpired term of the member whose term becomes vacant. Members of the state conservation commission and the supervisors of the district shall be ineligible to appointment as members of the board of adjustment during their tenure of such other office. The members of the board of adjustment shall receive compensation for their services at the rate of four dollars (\$4) per diem for time spent on the work of the board, in addition to expenses, including traveling expenses, necessarily incurred in the discharge of their duties. The supervisors shall pay the necessary

administrative and other expenses of operation incurred by the board, upon the certificate of the chairman of the board.

B. The board of adjustment shall adopt rules to govern its procedures, which rules shall be in accordance with the provisions of this act, and with provisions of any ordinance adopted pursuant to this section. The board shall annually elect a chairman from among its members. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Any two (2) members of the board shall constitute a quorum. The chairman, or in his absence, such other member of the board as he may designate to serve as acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep a full and accurate record of all proceedings, of all documents filed with it, and of all orders entered, which shall be filed in the office of the board and shall be a public record.

C. Any qualified elector may file a petition with the board of adjustment, alleging that there are great practical difficulties or unnecessary hardship in the way of his carrying out upon his lands the strict letter of the land-use regulations prescribed by ordinance approved by the supervisors, and praying the board to authorize a variance from the terms of the land-use regulations in the application of such regulations to the lands occupied by the petitioner. Copies of such petition shall be served by the petitioner upon the chairman of the supervisors of the district within which his lands are located and upon the chairman of the state conservation commission. The board of adjustment shall fix a time for the hearing of the petition and cause due notice of such hearing to be given. The supervisors of the district and the state conservation commission shall have the right to appear and be heard at such hearing. Any qualified elector within the district who shall object to the authorizing of the variance prayed for may intervene and become a party to the proceedings. Any party to the hearing before the board may appear in person, by agent, or by attorney. If, upon the facts presented at such hearing the board shall determine that there are great practical difficulties or unnecessary hardship in the way of applying the strict letter of any of the land-use regulations upon the lands of the petitioner, it shall make and record such determination and shall make and record findings of fact as to the specific conditions which establish such great practical difficulties or unnecessary hardship. Upon the basis of such findings and determination, the board shall have power by order to authorize such variance from the terms of the land-use regulations, in their application to the lands of the petitioner, as will relieve such great practical difficulties or unnecessary hardship and will not be contrary to the public interest, and such that the spirit of the land-use regulations shall be observed, the public health, safety, and welfare secured, and substantial justice done.

D. \* \* \* [Same as parent volume.]

History: En. Sec. 11, Ch. 72, L. 1939;      Amendments  
amd. Sec. 10, Ch. 431, L. 1971.

The 1971 amendment substituted "state conservation commission" for "state soil conservation committee" throughout the



section; substituted "qualified elector" for "land occupier" in the first sentence, and for "occupiers of land lying" in the fifth

sentence, of subsection C; and made minor changes in style and punctuation.

**76-114. Discontinuance of districts.** (1) At any time after five (5) years after the organization of a district under the provisions of this act, any ten (10) qualified electors within the boundaries of such district may file a petition with the state conservation commission, praying that the operations of the district be terminated and the existence of the district discontinued. The commission may conduct such public meetings and public hearings upon such petition as may be necessary to assist it in the consideration thereof.

(2) Within sixty (60) days after such a petition has been received by the commission it shall give due notice of the holding of a referendum, and shall supervise such referendum, and issue appropriate regulations governing the conduct thereof, the question to be submitted by ballots upon which the words "For terminating the existence of the \_\_\_\_\_ (name of the conservation district to be here inserted)" and "Against terminating the existence of the \_\_\_\_\_ (name of the conservation district to be here inserted)" shall appear, with the square before each proposition and a direction to insert an "X" mark in the square before one or the other of said propositions as the voter may favor or oppose discontinuance of such district. All qualified electors within the boundaries of the district shall be eligible to vote in such referendum. No informalities in the conduct of such referendum or in any matters relative thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

(3) The commission shall publish the result of such referendum and shall thereafter consider and determine whether the continued operation of the district within the defined boundaries is administratively practicable and feasible. If the commission shall determine that the continued operation of such district is administratively practicable and feasible, it shall record such determination and deny the petition. If the commission shall determine that the continued operation of such district is not administratively practicable and feasible, it shall record such determination and shall certify such determination to the supervisors of the district.

(4) In making such determination the commission shall give due regard and weight to the attitudes of the qualified electors lying within the district, the number of land occupiers qualified electors eligible to vote in such referendum who shall have voted, the proportion of the votes cast in such referendum in favor of the discontinuance of the district to the total number of votes cast, the approximate wealth and income of the qualified electors of the district, the probable expense of carrying on erosion control operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the legislative findings set forth in section 76-102; provided, however, that the commission shall not have authority to determine that the continued operation of the district is administratively practicable and

feasible unless at least a majority of the votes cast in the referendum shall have been cast in favor of the continuance of such district.

(5) Upon receipt from the state conservation commission of a certification that the commission has determined that the continued operation of the district is not administratively practicable and feasible, pursuant to the provisions of this section, the supervisors shall forthwith proceed to terminate the affairs of the district. The supervisors shall dispose of all property belonging to the district at public auction and shall pay over the proceeds of such sale to be covered into the state treasury. The supervisors shall thereupon file an application, duly verified, with the secretary of state for the discontinuance of such district, and shall transmit with such application the certificate of the state conservation commission, setting forth the determination of the commission that the continued operation of such district is not administratively practicable and feasible. The application shall recite that the property of the district has been disposed of and the proceeds paid over as in this section provided, and shall set forth a full accounting of such properties and proceeds of the sale. The secretary of state shall issue to the supervisors a certificate of dissolution and shall record such certificate in an appropriate book of record in his office.

(6) Upon issuance of a certificate of dissolution under the provisions of this section, all ordinances and regulations theretofore adopted and in force within such districts shall be of no further force and effect. All contracts theretofore entered into, to which the district or supervisors are parties, shall remain in force and effect for the period provided in such contracts. The state conservation commission shall be substituted for the district or supervisors as party to such contracts. The commission shall be entitled to all benefits and subject to all liabilities under such contracts and shall have the same right and liability to perform, to require performance, to sue and be sued thereon, and to modify or terminate such contracts by mutual consent or otherwise, as the supervisors of the district would have had. Such dissolution shall not affect the lien of any judgment entered under the provisions of section 76-110, nor the pendency of any action instituted under the provisions of such section, and the commission shall succeed to all rights and obligations of the district or supervisors as to such liens and actions.

**History:** En. Sec. 14, Ch. 72, L. 1939;  
amd. Sec. 11, Ch. 431, L. 1971.

#### Amendments

The 1971 amendment substituted "qualified electors" for "occupiers of land lying" in the first sentence of subsection (1), for "occupiers of lands lying" in the second sentence of subsection (2), for "occupiers of lands" near the beginning of subsection (4), and for "land occupiers"

near the middle of subsection (4); substituted "state conservation commission" for "state soil conservation committee" throughout the section; substituted "commission" for "committee" throughout the section; deleted "soil" before "conservation" twice in the first sentence of subsection (2); and deleted a former third sentence of subsection (2) reading, "Only such land occupiers shall be eligible to vote."

**76-115. Disposition of funds.** A. Unless otherwise provided by law, all moneys which may from time to time be appropriated out of the state treasury to pay the administrative and other expenses of conserva-

tion districts organized under the provisions of this act shall be allocated by the state soil conservation commission among the districts already organized, or to be organized, during the ensuing biennial fiscal period, in accordance with the procedure specified in subsection B of this section. All moneys allocated to any district by the said commission shall be available to the supervisors of such district for all administrative and other expenses of the district under this act and for all administrative and other expenses of the board of adjustment established or to be established by said district.

B. Seventy-five per cent (75%) of all moneys which may be appropriated to pay the administrative and other expenses of conservation districts shall be allocated by the state conservation commission among all the districts organized, or to be organized, within the ensuing biennial fiscal period, under this act, in direct proportion to the total acreage of land within each district. The remaining twenty-five per cent (25%) of said moneys shall be allocated by the state commission among the districts on such basis of allocation as shall be fair, reasonable, and in the public interest, giving due consideration to the greater relative expense of carrying on operations within the particular districts because of such factors as unusual topography, unusual severity of erosion, special difficulty of carrying on operations, special volume of work to be done, and the special importance of instituting erosion control operations immediately. In making allocations of such moneys, the commission shall retain an amount estimated by it to be adequate to enable it to make subsequent allocations in accordance with the provisions of this section from time to time among districts which may be organized after the initial allocations are made, but within the ensuing biennial fiscal period.

C. The state conservation commission shall submit to the state board of examiners, on or before the first (1st) day of November of each year preceding a regular session of the legislative assembly a request for an appropriation as provided in the budget act. The request for an appropriation shall state, in addition to the requirements of the budget act, the following:

The number and acreages of districts in existence or in process of organization, together with an estimate of the number and probable acreages of the districts which may be organized during the ensuing biennial fiscal period; a statement of the balance of funds, if any, available to the commission and to the districts; and the estimates of the commission as to the sums needed for its administrative and other expenses and for allocation among the several districts during the ensuing biennial fiscal period.

**History:** En. Sec. 15, Ch. 72, L. 1939; amd. Sec. 12, Ch. 431, L. 1971.

#### **Amendments**

The 1971 amendment deleted "soil" before "conservation districts" in the first sentences of subsections A and B; sub-

stituted "commission" for "committee" throughout the section; substituted "state conservation commission" for "state soil conservation committee" in the first sentences of subsections B and C; and made minor changes in style and phraseology.

#### **76-117. Change of district name—division and combination of districts.**

(1) Petitions for changing the name of a district organized under this



act may be filed with the state conservation commission. Any such petition shall be signed by a majority of the district supervisors and shall state the present name of the district and the proposed new name. If the commission determines that the proposed new name is not identical with or so similar to that of any other district in the state as to lead to confusion or uncertainty, it shall present a statement of such determination to the secretary of state, who shall issue to the district a certificate, under the seal of the state, evidencing the change of name of the district. Upon the issuance of such certificate, the supervisors of the district shall cause due notice to be given of the change of the name of the district.

(2) A petition may be filed with the state commission for the division of any district or the combination of any two (2) or more districts, or for the division of a district and the combination of any divided part thereof with any other district. Any or all of such actions may be initiated by the filing of a single petition with the commission. Any such petition shall be signed by a majority of the members of each of the governing bodies of the affected districts. The commission shall prescribe the form for such petition. Upon the filing of any such petition, the commission shall within thirty (30) days give due notice of public hearing upon such petition. All qualified electors within the affected districts, and all other interested parties, shall have the right to attend such hearing and to be heard. After such hearing, the commission shall determine whether the proposed division, the combination or division and combination of territory is administratively practicable and feasible. In making such determination the commission shall give due regard to the legislative determinations set forth in section 76-102 and to the considerations enumerated in section 76-105, to the extent applicable, relative to determining the practicability and feasibility of creating a district.

(3) If the commission shall determine that the proposed division or combination, or division and combination, is administratively practicable and feasible, the commission shall effect such proposed division, combination, or division and combination by filing with the secretary of state a statement certifying the changes made in the boundaries of the affected districts, together with any change in the name of such districts. If such determination is in the negative the commission shall make and record such determination and shall deny the petition. After six (6) months from the denial of such petition, a new petition may be filed involving any of such proposals.

(4) Upon the division of a district, the supervisors thereof shall allocate the property, rights and liabilities, including contractual obligations, of the district among the resulting parts of the district, giving due consideration to the proportionate size of each such divided part, the number of qualified electors and operating units and the degree and extent of soil erosion therein, and other relevant factors. A statement of such allocation shall be filed with the state commission within thirty (30) days after the notification of the commission's determination in favor of the division of the district. Upon the failure of the supervisors to make, or to agree upon, such allocation, it shall be made by the commission after such

hearing as the commission may deem necessary, and with due regard for the standards set out in this paragraph for making such allocations.

**History:** En. 76-117 by Sec. 1, Ch. 46, L. 1951; amd. Sec. 1, Ch. 41, L. 1959; amd. Sec. 13, Ch. 431, L. 1971.

#### Amendments

The 1971 amendment substituted "state conservation commission" for "state soil conservation committee" in the first sen-

tence of subsection (1); substituted "commission" for "committee" throughout the section; substituted "qualified electors" for "occupiers of lands" in the sixth sentence of subsection (2), and for "land occupiers" in the first sentence of subsection (4); and made minor changes in phraseology and style.

## CHAPTER 2—CONSERVATION DISTRICT ASSESSMENTS AND FUNDS

### Section

- 76-201. Notice of organization of district filed.
- 76-205. Division between counties of money to be raised by regular and special assessment.
- 76-206. Expenses to be covered by estimate.
- 76-207. Regular and special assessments.
- 76-208. Maximum regular assessment.
- 76-209. Levy of regular and special assessment.
- 76-210. Computation of rate of assessment.
- 76-215. Depository of district funds.
- 76-216. Receipt and crediting of district funds—responsibility on bond.
- 76-220. District authorized to borrow money—pledging credit of district or issuance of warrants—levy for repayment—limitation on warrants.
- 76-221. Investment of funds in interest-bearing securities authorized—conversion into cash.
- 76-222. Investment of unneeded surplus funds—deposit of funds with depository or bank—surety bond or pledge of securities to ensure payment of deposit.
- 76-223. Issuance of bonds authorized—other financing—special elections.
- 76-224. Establishment of project areas upon petition—special assessments.
- 76-225. Hearing on petition to establish project area—report of supervisors—election on creation—filing notice of creation.
- 76-226. Protests against proposed projects or creation of project area.
- 76-227. Description of work or project area.
- 76-228. District area included in project area—administration of affairs.
- 76-229. Estimates of expenses of project area—financing by assessments.
- 76-230. Federal authority unaffected.
- 76-231. Special assessments a lien.
- 76-232. Assessments unaffected by misnomers and mistakes relating to ownership.
- 76-233. Duty to maintain improvements.

**76-201. Notice of organization of district filed.** The supervisors of a conservation district shall, within ten (10) days after the creation of the district, or within thirty (30) days after the effective date of this act, cause a notice declaring the district organized to be filed for record in the office of the county clerk and recorder of each county in which any portion of the district is situated.

**History:** En. Sec. 1, Ch. 253, L. 1963; amd. Sec. 3, Ch. 291, L. 1969; amd. Sec. 14, Ch. 431, L. 1971.

#### Amendments

The 1969 amendment inserted "and water" before "conservation district."

The 1971 amendment deleted "soil and water" before "conservation district."

**76-205. Division between counties of money to be raised by regular and special assessment.** If the district lies in more than one county the supervisors of the district shall divide the amount of the estimate of the regular assessment in the proportion to the value of the land in the district

lying in each county. The value shall be determined from the last assessment rolls of the counties. The supervisors shall furnish the boards of county commissioners of each of the respective counties a statement of the part of the estimate apportioned to the county. The estimates of the special assessments shall be divided in proportion to the value of land lying within the project area.

**History:** En. Sec. 5, Ch. 253, L. 1963; amd. Sec. 4, Ch. 291, L. 1969.

regular assessment" after "amount of the estimate" in the first sentence; and added the last sentence.

#### Amendments

The 1969 amendment inserted "of the

**76-206. Expenses to be covered by estimate.** The total amount of the estimate shall be sufficient to raise the amount of money necessary during the ensuing year to pay the incidental expenses of the district.

**History:** En. Sec. 6, Ch. 253, L. 1963; amd. Sec. 5, Ch. 291, L. 1969.

mated cost of repairs to and maintenance of property and works and estimated expenses of any action or proceeding to which district was or might be a party, including the cost of employing engineers and attorneys.

#### Amendments

The 1969 amendment deleted provisions requiring that estimate be sufficient for costs of work during ensuing year, esti-

**76-207. Regular and special assessments.** Assessments levied pursuant to this act shall be known as regular and special assessments.

**History:** En. Sec. 7, Ch. 253, L. 1963; amd. Sec. 6, Ch. 291, L. 1969.

#### Amendments

The 1969 amendment inserted "and special" before "assessments."

**76-208. Maximum regular assessment.** The regular assessment in any one (1) year shall not exceed one and one-half ( $1\frac{1}{2}$ ) mills on the dollar of total taxable valuation of real property within the district except that cities that voted to be included in a district prior to July 1, 1971, shall, by a majority vote of the council, be excluded from the district. The valuation shall be determined according to the last assessment roll.

**History:** En. Sec. 8, Ch. 253, L. 1963; amd. Sec. 3, Ch. 152, L. 1965; amd. Sec. 7, Ch. 291, L. 1969; amd. Sec. 15, Ch. 431, L. 1971.

mill" to "one and one-half ( $1\frac{1}{2}$ ) mills" and substituted "district" for "county" in the first sentence.

#### Amendments

The 1969 amendment increased the assessment from "one-half ( $\frac{1}{2}$ ) of one (1)

The 1971 amendment substituted "except that cities \* \* \* from the district" for "except that within incorporated cities and towns" at the end of the first sentence.

**76-209. Levy of regular and special assessment.** The board of county commissioners of each county in which there lies any portion of the district may, annually, at the time of levying county taxes, levy an assessment on the taxable real property within the district except that cities that voted to be included in a district prior to July 1, 1971, shall, by a majority vote of the council, be excluded from the district. It shall be known as the "———— (name of district) conservation district regular assessment," and shall be sufficient to raise the amount reported to them in the estimate of the supervisors.



The board of county commissioners of each county in which there lies any portion of a project area may, annually, at the time of levying county taxes, levy an assessment on the taxable real property within the project area, not to exceed three (3) mills. It shall be known as "..... (name of the project area) special assessment," and shall be sufficient to raise the amount reported to them in the estimate of the supervisors.

**History:** En. Sec. 9, Ch. 253, L. 1963; amd. Sec. 4, Ch. 152, L. 1965; amd. Sec. 8, Ch. 291, L. 1969; amd. Sec. 16, Ch. 431, L. 1971.

#### Amendments

The 1969 amendment substituted "district" for "county" after "real property within the" in the first sentence; in the second sentence, substituted "soil and water conservation district regular assessment" for "soil conservation district as-

essment" and deleted a proviso at the end reading, "provided, however, that income from the levy of the assessment provided in this act for any single district shall not exceed one thousand dollars (\$1000)"; and added the second paragraph.

The 1971 amendment substituted "except that cities \* \* \* from the district" for "except that within incorporated cities and towns" at the end of the first sentence of the first paragraph.

**76-210. Computation of rate of assessment.** The board of county commissioners shall determine the rate of assessment by deducting fifteen per cent (15%) for anticipated delinquencies from the total assessed value of the taxable real property in the district except that cities that voted to be included in a district prior to July 1, 1971, shall, by a majority vote of the council, be excluded from the district and then dividing the sum required to be raised by the remainder of the total assessed value. If a fraction of a cent occurs in a valuation of one hundred dollars (\$100) it shall be taken as a full cent.

**History:** En. Sec. 10, Ch. 253, L. 1963; amd. Sec. 5, Ch. 152, L. 1965; amd. Sec. 9, Ch. 291, L. 1969; amd. Sec. 17, Ch. 431, L. 1971.

#### Amendments

The 1969 amendment substituted "district" for "county" and inserted "that"

before "within incorporated cities" in the first sentence.

The 1971 amendment substituted "except that cities \* \* \* from the district" for "except that within incorporated cities and towns" in the first sentence.

**76-215. Depository of district funds.** The treasury of the principal county is the depository of all of the county tax funds of the district.

**History:** En. Sec. 15, Ch. 253, L. 1963; amd. Sec. 10, Ch. 291, L. 1969.

#### Amendments

The 1969 amendment inserted "county tax" before "funds."

**76-216. Receipt and crediting of district funds—responsibility on bond.** The treasurer of the principal county shall receive and receipt for all county tax money of the district and place the same to the credit of the district. He is responsible on his official bond for the safekeeping and disbursement, in the manner provided in this act, of the money of the district held by him.

**History:** En. Sec. 16, Ch. 253, L. 1963; amd. Sec. 11, Ch. 291, L. 1969.

#### Amendments

The 1969 amendment inserted "county tax" before "money of the district" in the first sentence.

**76-220. District authorized to borrow money—pledging credit of district or issuance of warrants—levy for repayment—limitation on warrants.** If after the levy of the annual assessments for the current year, the board finds that because of some unusual or unforeseen cause, funds raised through the collection of the assessments, and from other sources, will not be sufficient for the proper maintenance and operation of the district, and the works therein, the board may borrow additional funds needed to an amount not to exceed fifty cents (\$.50) per acre for the lands within the district and may pledge the credit of the district for the payment of the same, or the board may request the county commissioners to issue and register warrants in anticipation of further collections. The board shall include in the levy for the ensuing year the amount required to pay the loan or to retire the warrants. The warrants shall not exceed ninety per cent (90%) of the assessment for the year.

**History:** En. Sec. 12, Ch. 291, L. 1969.

**76-221. Investment of funds in interest-bearing securities authorized—conversion into cash.** The board of supervisors shall have the power and authority to direct the investment of funds in a sinking fund in interest-bearing securities whenever in their judgment the same may be to the best interests of the district. But, all such securities shall be converted into cash in time to meet the principal on the bonds, payable from such sinking fund promptly at their maturity.

**History:** En. Sec. 13, Ch. 291, L. 1969.

**76-222. Investment of unneeded surplus funds—deposit of funds with depository or bank—surety bond or pledge of securities to ensure payment of deposit.** The board of supervisors of a conservation district may invest any surplus funds of the district, except county tax funds, not needed for immediate use in the operations of the district or its activities, or to pay bonds or coupons, or to meet current expenses, in interest-bearing bonds or securities of the United States or of any agency of the United States if the bonds are guaranteed by the United States, or in bonds of the state of Montana or any county or municipal corporation in said state. The board of supervisors of said district may require any funds of the district to be deposited with such depository or bank as may be designated by the board, and likewise shall have authority to require the treasurer of the district to take from such depository a bond with corporate surety to ensure payment of any such deposit, or to require such depository to pledge securities of the same kind as the district is authorized to invest its funds in, to ensure payment of any such deposit.

**History:** En. Sec. 14, Ch. 291, L. 1969;      **Amendments**  
amd. Sec. 18, Ch. 431, L. 1971.

The 1971 amendment deleted "soil and water" before "conservation district" near the beginning of the first sentence.

**76-223. Issuance of bonds authorized—other financing—special elections.** Whenever a board of supervisors deems it necessary, it may issue bonds payable from revenues, assessments, or both, or the district may

use other financing as provided for by this act for the cost of works. The board of supervisors may call a special election to vote upon the proposition of issuing the bonds or may submit the proposition as a special question at a regular or general election. The notice of the election and the election itself shall be carried out in accordance with section 76-225 of this act. If from the returns of the election it appears that the majority of votes cast at such election were in favor of and assented to the incurring of the indebtedness, then the board of supervisors may, by resolution, provide for the issuance of such bonds. The authorization of such undertaking, the form, and content shall be carried out in accordance with section 11-2404 of the Municipal Revenue Bond Act of 1939. Validity of such bonds, use of revenue, and refunding shall be in accordance with the provisions of sections 11-2406, 11-2410, and 11-2414 of the Municipal Revenue Bond Act of 1939. Any bonds issued under this act have the same force, value, and use as bonds issued by a municipality and are exempt from taxation as property within the state of Montana.

**History:** En. Sec. 15, Ch. 291, L. 1969;  
amd. Sec. 19, Ch. 431, L. 1971.

#### **Amendments**

The 1971 amendment substituted "section 76-225" for "section 18 [17]" in the third sentence.

**76-224. Establishment of project areas upon petition—special assessments.** Whenever the public interest or convenience may require and upon the petition of a county, city, town, or by a co-operative grazing association or other special purpose district, or by more than fifty per cent (50%) of the qualified electors affected thereby the board of supervisors is hereby authorized and empowered to establish project areas for carrying out projects to accomplish one (1) or more of the purposes of the district and within which area special assessments can be made for carrying out project purposes.

**History:** En. Sec. 16, Ch. 291, L. 1969;  
amd. Sec. 20, Ch. 431, L. 1971.

for "village"; substituted "qualified electors" for "freeholders"; and made minor changes in punctuation and style.

#### **Amendments**

The 1971 amendment substituted "town"

**76-225. Hearing on petition to establish project area—report of supervisors—election on creation—filing notice of creation.** Upon receipt of a petition to establish a project area the board or boards of supervisors shall cause due notice to be given of a public hearing on the petition. Prior to the hearing the board or boards of supervisors shall make, or cause to be made, an investigation of the need for establishment of the proposed project area and shall prepare a report of their findings. The report shall be presented and read at the hearing on the petition. If the board, or boards, of supervisors finds that it is not feasible, desirable or practical to establish the proposed project area it shall make an order denying the petition and shall state therein its reasons for so doing. If, however, the board finds that the project is desirable, proper and necessary, it shall grant the petition, establish the boundaries of the proposed project area and give due notice of an election to be held in the proposed



area for the purpose of determining whether or not the project area shall be created. The question shall be submitted to the electors by ballot on which the words "For creation of proposed project area" and "Against creation of proposed project area" shall appear, with a square before each proposition and directions to insert an "X" mark in the square before one or the other of said propositions as the voters may favor or oppose creation of the project area. No person shall be entitled to vote at the election unless such person possesses all the qualifications required of electors under Title 23, R. C. M. 1947, and resides within the boundaries of the proposed project area and the county in which he proposes to vote. If the majority of the votes cast at the election are in favor of creating a project area, the board, or boards, of supervisors shall create the project area and shall file with the county clerk and recorder in each county in which there lies a portion of the project area a notice of creation of the project area setting forth the purposes of the area and the boundaries thereof.

**History:** En. Sec. 17, Ch. 291, L. 1969; amd. Sec. 21, Ch. 431, L. 1971.

#### **Amendments**

The 1971 amendment deleted "and excluding those lands that will not be so benefited" after "proposed project area"

in the fifth sentence; substituted the reference to Title 23 in the seventh sentence for "the general laws of the state"; substituted "resides" for "is the owner of taxable real property situated" in the seventh sentence; and made a minor change in phraseology.

### **76-226. Protests against proposed projects or creation of project area.**

At any time within fifteen (15) days after the date of the last publication of the notice of the hearing on the petition, any owner of property liable to be assessed for the project may protest against the proposed project or the creation of the project area or both. The protest must be in writing and be delivered to the secretary of the conservation district who shall endorse thereon the date of its receipt by him. At the public hearing on the petition the board of supervisors shall proceed to hear and pass upon all protests made and its decision shall be final and conclusive; except when owners or [of] more than fifty per cent (50%) of the land in the proposed project area protest the project. If owners of more than fifty per cent (50%) of the land protest the project, no further action may be taken for a period of six (6) months from the date of the hearing after which a new petition may be filed.

**History:** En. Sec. 18, Ch. 291, L. 1969; amd. Sec. 22, Ch. 431, L. 1971.

#### **Compiler's Notes**

The bracketed word "of" near the end of the section has been inserted by the compiler.

#### **Amendments**

The 1971 amendment deleted "soil and water" before "conservation" in the second sentence; and made minor changes in style and punctuation.

**76-227. Description of work or project area.** In all resolutions, notices, orders and determinations, it shall be sufficient to briefly describe the work or the project area, or both.

**History:** En. Sec. 19, Ch. 291, L. 1969.

**76-228. District area included in project area—administration of affairs.** A project area may include a part or all of any district or may

include areas in more than one (1) district. The affairs of a project area shall be administered by the board, or boards, of supervisors or their authorized agents.

**History:** En. Sec. 20, Ch. 291, L. 1969.

**76-229. Estimates of expenses of project area—financing by assessments.** When a project area has been created, the board, or boards, of supervisors shall estimate the expenses of the project area from the date of its establishment until the end of the ensuing fiscal year and before July 1, in each year thereafter shall estimate project area expenses for the fiscal year ensuing. Estimates of project area expenses may include revenue needed to pay the interest or principal of any bonded debt, costs of rights of way, easements, or other interest in property deemed necessary for the construction, operation and maintenance of any projects therein. The expense of the project area may, in the discretion of the board, or boards, of supervisors, be financed in whole from revenue received by regular assessments or by revenue received in part from regular assessments and in part from special assessments. Upon adoption of a budget covering necessary expenses, the board, or boards, of supervisors shall send a copy of such budget or apportionment thereof to the board of county commissioners and/or city auditor of each county and/or city in the project area. When the board, or boards, of supervisors has determined that a special assessment is necessary, the board of county commissioners of such county in which there lies any portion of a project area shall annually, at the time of levying county taxes, levy a special assessment of the taxable real property in the project area, not to exceed three (3) mills. It shall be known as the "..... (name of district) soil and water conservation district special assessment," and shall be sufficient to raise the income reported to them in the estimate of the supervisors. Each lot or parcel of land to be assessed shall be assessed with that part of the amount of money required which its taxable valuation bears to the total taxable valuation of all the lands to be assessed. Funds produced each year by this special tax levy shall be available until spent, and if this special tax levy in any year does not produce sufficient revenue to pay the project area expenses, a fund sufficient to pay the same may be accumulated. A special assessment to defray the expenses of a project area may be spread over a term of not to exceed forty (40) years.

**History:** En. Sec. 21, Ch. 291, L. 1969.

**76-230. Federal authority unaffected.** The provisions of this section shall not apply to the government of the United States or any department, bureau, or agency thereof, except to such extent as the government of the United States or any department, bureau, or agency thereof may desire to take advantage of its provisions, it being the express purpose and intent of this section to aid but not to interfere with the government of the United States or of any department, bureau, or agency thereof in any undertaking over which such federal authority desires to exercise full supervision and control. The provisions of this section shall not be construed to impair, limit, or repeal any right whatsoever, which the gov-

ernment of the United States or any department, bureau, or agency thereof has to full and complete jurisdiction, management, or control over projects over which such federal authority desires to exercise such rights, it being the purpose of this section expressly to subordinate any power of jurisdiction and to never interfere directly with such federal authority.

**History:** En. Sec. 22, Ch. 291, L. 1969.

**76-231. Special assessments a lien.** Any special assessment made and levied to defray the cost and expenses of any of the work enumerated in this act, together with any percentages imposed for delinquency and for cost of collection, shall constitute a lien against the property upon which such assessment is levied, and after the date levying such assessment, which lien can only be extinguished by payment of such assessment, with all penalties, costs and interest.

**History:** En. Sec. 23, Ch. 291, L. 1969.

**76-232. Assessments unaffected by misnomers and mistakes relating to ownership.** When under the provisions of this act special taxes and assessments are assessed against any lot or parcel of land as the property of a particular person, no misnomer of the owner or supposed owner or other mistake, relating to the ownership thereof, shall affect such assessment or render it void or voidable.

**History:** En. Sec. 24, Ch. 291, L. 1969.

**76-233. Duty to maintain improvements.** Whenever any project petitioned for, or created by the state or federal government, has been made, built, constructed, erected or accomplished as in this act provided, it is hereby made the duty of the board, or boards, of supervisors, under whose jurisdiction the project area was created, to adequately and suitably maintain and preserve said improvements and fully to keep the same in proper repair and operation by contract or otherwise, in the way or manner as the board shall deem suitable and proper.

**History:** En. Sec. 25, Ch. 291, L. 1969.





## TITLE 77—SOLDIERS, SAILORS AND MILITARY AFFAIRS

### Chapter

1. Militia, composition, enrollment—officers, general provisions, 77-117, 77-120, 77-121, 77-157.
5. Soldiers and sailors preference in public employment, 77-501.
9. Veterans' free tuition at university of Montana, 77-909.
10. Veterans' welfare commission, 77-1002.
13. Civil defense, 77-1304.
15. Post-attack resource management, 77-1501 to 77-1508.

### CHAPTER 1—MILITIA, COMPOSITION, ENROLLMENT—OFFICERS, GENERAL PROVISIONS

#### Section

- 77-117. The adjutant general of the state—assistant adjutants general.  
77-120. Duties of adjutant general—salary.  
77-121. Officers to be commissioned by the governor.  
77-157. Leave of absence of state employees attending training camp or similar training program.

**77-117. (1346) The adjutant general of the state—assistant adjutants general.** There shall be an adjutant general of the state of Montana, who shall be appointed by the governor, and shall have the rank of major general. He shall hold office for the term for which the governor appointing him shall have been elected, and until his successor shall have been appointed. He shall be selected from the active list of the national guard of this state and shall have been federally recognized in the rank of major or above immediately prior to his appointment. He shall have had at least ten (10) years of service as an officer of the active national guard of this state during the fifteen (15) years immediately prior to his appointment. He shall perform the duties prescribed for him in this chapter and in the regulations now or hereafter issued thereunder, and in the statutes of the United States now or hereafter enacted, and such duties as pertain to the duties of the chiefs of staff departments. The salary of the adjutant general shall be in such amount as may be specified by the legislative assembly in the appropriation to the adjutant general. If the legislative assembly does not specify the maximum salary of the adjutant general, any increase in the salary of the adjutant general must be approved by the board of examiners. Before approving any salary increase, the board of examiners shall review the salaries of comparable positions in Montana state government, other states, and private industry, provided, however, that no part of said salary shall be paid by the state when the adjutant general is on extended active duty with the United States military service or is receiving pay as a civilian employee of the federal government; provided that if, by reason of the call or draft of officers of the Montana national guard into the federal service, there are no officers of the national guard possessing the requisite qualifications as set forth above for appointment, then any officer of the national guard may be appointed as acting adjutant general.

The adjutant general shall establish, within the state headquarters of the Montana national guard, separate departments for the army national guard and the air national guard. Each department shall have a brigadier general at its head, who will be referred to as assistant adjutant general for Montana army national guard and assistant adjutant general for Montana air national guard. The assistant adjutants general shall be appointed by the adjutant general with the approval of the governor. One (1) shall be selected from the active list of the Montana army national guard and the other from the active list of the Montana air national guard, and each must have the qualifications set forth above for appointment as adjutant general. They shall perform such duties as are prescribed by the adjutant general.

**History:** En. Sec. 23, Ch. 191, L. 1919; re-en. Sec. 1346, R. C. M. 1921; amd. Sec. 1, Ch. 21, L. 1949; amd. Sec. 1, Ch. 26, L. 1955; amd. Sec. 1, Ch. 272, L. 1959; amd. Sec. 1, Ch. 74, L. 1963; amd. Sec. 5, Ch. 237, L. 1967.

#### Amendments

The 1967 amendment, in the first para-

graph, substituted the sixth and seventh sentences and the portion of the eighth sentence preceding the proviso, for a sentence fixing the salary at \$7,500.

#### Cross-References

Adjutant general continued as head of department of military affairs, sec. 82A-1401.

**77-120. (1349) Duties of adjutant general—salary.** The adjutant general shall be ex officio chief of staff. He shall hold office until his successor is appointed and qualified. He shall appoint the civilian employees of his department, and may remove any of them in his discretion.

The expenses of the adjutant general's department, necessary to the military service, shall be audited, allowed, and paid as other military expenditures are audited, allowed, and paid.

1. The adjutant general shall keep a roster of all active, reserve, and retired officers of the militia of the state, and keep in his office all records and papers required to be kept and filed therein, and shall report as provided in section 2 [82-4002] of this act.

2 to 11. \* \* \* [Same as parent volume.]

12. The annual salary of the assistant adjutant shall be in such amount as may be specified by the legislative assembly in the appropriation to the adjutant general. If the legislative assembly does not specify the maximum salary of the assistant adjutant general, any increase in the salary of the assistant adjutant general must be approved by the board of examiners. Before approving any salary increase, the board of examiners shall review the salaries of comparable positions in Montana state government, other states, and private industry.

**History:** En. Sec. 20, Ch. 191, L. 1919; re-en. Sec. 1349, R. C. M. 1921; subd. 12: En. Sec. 1, Ch. 118, L. 1947; re-en. Sec. 1, Ch. 20, L. 1949; subd. 13: Sec. 2, Ch. 118, L. 1947 as added Sec. 1, Ch. 20, L. 1949; amd. Sec. 2, Ch. 272, L. 1959; amd. Sec. 35, Ch. 177, L. 1965; amd. Sec. 6, Ch. 237, L. 1967; amd. Sec. 32, Ch. 93, L. 1969.

#### Amendments

The 1967 amendment substituted subparagraph 12 for one which read, "The

annual salary of the adjutant general of the state of Montana shall be four thousand two hundred dollars (\$4,200.00)"; and deleted subparagraph 13, which read, "The annual salary of the assistant adjutant general of the state of Montana shall be three thousand six hundred dollars (\$3,600.00)."

The 1969 amendment, in subparagraph 1, substituted the reporting requirements of section 82-4002 for former provision requiring a printed biennial report of the



operations and conditions of the organized militia to be submitted to the governor during December of each even-numbered year.

#### Cross-References

Adjutant general's functions transferred

to department of military affairs, sec. 82A-1403.

Bonds of state officers and employees, sec. 6-105 et seq.

Department abolished and functions transferred, sec. 82A-1402(1).

**77-121. (1350) Officers to be commissioned by the governor.** All commissioned officers of the organized militia of Montana shall be appointed and commissioned by the governor. No person shall be so appointed and commissioned unless he shall be a citizen of the United States and of this state, and more than eighteen (18) years of age. Every commissioned officer shall hold office under his commission until he shall have been regularly appointed and commissioned to another grade or office, or until he shall have been regularly retired, discharged, dismissed, or placed in the reserve.

**History:** En. Sec. 21, Ch. 191, L. 1919; re-en. Sec. 1350, R. C. M. 1921; amd. Sec. 16, Ch. 423, L. 1971.

#### Amendments

The 1971 amendment reduced the age specified at the end of the second sentence from twenty-one to eighteen years.

**77-157. Leave of absence of state employees attending training camp or similar training program.** That any person who is a member of the organized national guard of the state of Montana or who is a member of the organized or unorganized reserve corps or forces of the United States army, navy, marine corps, or coast guard, which now exist or may be created at any time in the future by proper authority, and who is an appointee of or employee of the state of Montana, or any of its departments, or any county or city within the state, and who has been such appointee or employee for a period of six (6) months, shall be given leave of absence with pay for a period of time not to exceed fifteen (15) working days in any calendar year for attending regular encampments, training cruises, and similar training programs authorized by the secretary of defense of the United States for the Montana national guard or by the proper legal authority in charge of the reserve corps or forces of the United States army, navy, marine corps, or coast guard while in attendance at such annual encampment, training cruise, and similar training program, or without the time being charged against him on his annual vacation.

**History:** En. Sec. 1, Ch. 160, L. 1937; amd. Sec. 1, Ch. 132, L. 1947; amd. Sec. 1, Ch. 113, L. 1971.

#### Amendments

The 1971 amendment inserted "and who

has been such appointee or employee for a period of six (6) months" and "for a period of time not to exceed fifteen (15) working days in any calendar year"; and substituted "secretary of defense" for "secretary of war."

## CHAPTER 5—SOLDIERS AND SAILORS PREFERENCE IN PUBLIC EMPLOYMENT

### Section

77-501. Purpose of act—Definitions—preference.

**77-501. (5653) Purpose of act—definitions—preference.** The purpose of this act is to provide for preference of veterans, their unmarried wid-

ows, and dependents, and certain disabled civilians in appointment and employment in every public department and upon all public works of the state of Montana and of any county and city thereof.

(1) Definitions.

(a) The term "veterans" as herein used, means men and women who served in the armed forces of the United States, and who have been separated from such service upon conditions other than dishonorable, in time of war or declared national emergency as follows: the Civil War; the Spanish American War; the Philippine Insurrection; World War I, between April 6, 1917, and November 11, 1918, both dates inclusive; World War II, which term means such service between September 16, 1940, and December 31, 1946, both dates inclusive; the Korean War, military expedition, or police action, between June 26, 1950, and January 31, 1955, both dates inclusive; and those honorably discharged veterans who have served on active military duty for more than one hundred eighty (180) days after January 31, 1955, or who were discharged or released because of a service-connected disability, including, but not limited to, those veterans serving because of the Vietnam Conflict.

(b). \* \* \* [Same as parent volume.]

(2) Preference to appointment and employment.

\* \* \* [Same as parent volume.]

(3) Credit for examinations.

When written or oral examinations are required for employment as above described, disabled veterans and their wives, their unremarried widows, and other dependents of disabled veterans, shall have added to their examination ratings a credit of ten points, and all other veterans, their wives, unremarried widows, and dependents shall have added to their examination ratings a credit of five points; provided that the fact that an applicant has claimed a veterans' credit shall not be made known to the examiners until ratings of all applicants have been recorded; after which such credits shall be added to the examination rating and the records shall show the examination rating and the veteran's credit; provided further that the benefits of this subsection are in addition to and not in derogation of the preference in appointment and/or employment given by subsection (2) hereof.

(4) Eligibility.

\* \* \* [Same as parent volume.]

(5) Enforcement of preference.

\* \* \* [Same as parent volume.]

**History:** En. Sec. 1, Ch. 211, L. 1921; re-en. Sec. 5653, R. C. M. 1921; amd. Sec. 1, Ch. 133, L. 1927; amd. Sec. 1, Ch. 66, L. 1937; amd. Sec. 1, Ch. 160, L. 1943; amd. Sec. 1, Ch. 223, L. 1947; amd. Sec. 1, Ch. 26, L. 1949; amd. Sec. 1, Ch. 120, L. 1955; amd. Sec. 1, Ch. 193, L. 1969.

**Amendments**

The 1969 amendment, in subdivision (1), item (a), substituted "December 31, 1946" for "September 2, 1945" as terminal date

for service in World War II and added "and those honorably discharged veterans \* \* \* because of the Vietnam Conflict"; deleted former item (c), which read, "The word 'per centum' means per centum of the total aggregate points of the examination hereinafter referred to"; and in subdivision (3), substituted "ten points" and "five points" for "ten per centum (10%)" and "five per centum (5%)" after "credit of."

**Separability Clause**

Section 2 of Ch. 193, Laws 1969 read:  
 "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the

invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

**CHAPTER 9—VETERANS' FREE TUITION AT UNIVERSITY OF MONTANA****Section**

77-909. War orphans' attendance to be without fees.

**77-909. War orphans' attendance to be without fees.** There shall be established under this act the authority of the state board of education to waive, the charges for the matriculation, tuition, any and all educational fees, for such children of members of the armed forces of the United States who served on active duty during World War II and/or the Korean or Vietnam conflicts and who, at the time of entry into such service, had legal residence in this state and who were heretofore, or shall hereafter be, either killed in action or shall have died as a result of injury, disease, or other disability incurred while in the service of the armed forces of the United States, as are now attending or may hereafter attend any of the units of the greater university of Montana, provided:

(a) and (b). \* \* \* [Same as parent volume.]

**History:** En. Sec. 1, Ch. 141, L. 1957;  
 amd. Sec. 1, Ch. 150, L. 1965; amd. Sec.  
 1, Ch. 225, L. 1969.

**Amendments**

The 1969 amendment substituted "Korean or Vietnam conflicts" for "Korean conflict."

**CHAPTER 10—VETERANS' WELFARE COMMISSION****Section**

77-1002. Duty of commission.

**77-1001. Veterans' welfare commission created.****Cross-References**

Commission renamed and continued in

department of social and rehabilitation services, sec. 82A-1905.

**77-1002. Duty of commission.** It shall be the duty of the commission and it shall have power to establish a state-wide service for discharged veterans and their families; to actively co-operate with state and federal agencies having to do with the affairs of veterans and their families; and to promote the general welfare of all veterans and their families. In carrying out the purposes of this act the commission may employ a director, service officers, assistants, clerks, or other personnel, all of whom must be residents of the state of Montana, prescribe their duties and fix and pay their compensation; and establish a state headquarters and such other offices as may be necessary to carry out the purposes of this act. All male employees of the commission shall have served in the military forces of the United States during World War I, World War II, the Korean War, or the Vietnam Conflict, and shall have been honorably discharged



therefrom; whenever possible female employees shall also be persons honorably discharged from service during World War I, World War II, the Korean War, or the Vietnam Conflict; preference for all appointments shall be given to disabled veterans.

History: En. Sec. 2, Ch. 111, L. 1945;  
amd. Sec. 1, Ch. 92, L. 1971.

#### Amendments

The 1971 amendment inserted references to the Korean War and the Vietnam Conflict in two places in the third sentence.

### CHAPTER 13—CIVIL DEFENSE

#### Section

77-1304. State civil defense agency.

**77-1304. State civil defense agency.** (a) There is hereby created in the state adjutant general's department, a civil defense agency, with a director of civil defense (hereinafter called the "director") who shall be the head thereof. The director shall be appointed by, and shall hold office at the pleasure of the governor, and shall be compensated at a salary to be fixed by the legislative assembly in the appropriation to the adjutant general. If the legislative assembly does not specify the maximum salary of the director of civil defense, any increase in the salary of the director must be approved by the board of examiners. Before approving any salary increase the board of examiners shall review the salaries of comparable positions in Montana state government, other states, and private industry. The director shall devote his full time and energies to the duties of director of civilian defense including co-operation and co-ordination with the commander of the home guard.

(b) to (e). \* \* \* [Same as parent volume.]

History: En. Sec. 4, Ch. 218, L. 1951;  
amd. Sec. 3, Ch. 220, L. 1953; amd. Sec. 7,  
Ch. 237, L. 1967.

salary however, shall not exceed six thousand six hundred dollars (\$6,600.00) per year."

#### Amendments

The 1967 amendment, in subsection (a), substituted "by the legislative assembly \* \* \* and private industry" before "The director" for "by the governor, which

#### Cross-References

Agency abolished and functions transferred, sec. 82A-1402(2).

Director's position abolished and functions transferred, sec. 82A-1402(3).

### 77-1305. Civil defense advisory council.

#### Cross-References

Council abolished, sec. 82A-1404(1).

### CHAPTER 15—POST-ATTACK RESOURCE MANAGEMENT

#### Section

77-1501. Citation of act.

77-1502. Legislative findings—policy of state.

77-1503. Definition of terms.

77-1504. State emergency resource planning committee—composition.

77-1505. Governor's powers and duties under act.

77-1506. Proclamation of emergency—governor's powers during emergency.

77-1507. Judicial inquiry as to emergency proclamation and facts.

77-1508. Penalty for violation of rules and regulations.

**77-1501. Citation of act.** This act may be cited as the "Post-attack Resource Management Act."

**History:** En. Sec. 1, Ch. 297, L. 1967.

**Title of Act**

An act to provide for the emergency management of resources.

**77-1502. Legislative findings—policy of state.** (1) The legislature recognizes that an attack upon the United States is a possibility; that such attack might be of unprecedented size and destructiveness; that a considerable period of time may elapse after an attack before federal operational control over the management of resources can be instituted; and that federal planning and activities with respect to post-attack recovery and rehabilitation necessarily are predicated on the ability of the states and their political subdivisions to prepare for, and respond promptly to, the problems created by an attack. Therefore, it is hereby found and declared to be necessary:

(a) To create an office of emergency resource management for the execution of a plan for emergency resource management;

(b) To confer upon the governor and upon the executive heads of governing bodies of political subdivisions of the state the emergency powers provided herein.

(2) It is further declared to be the purpose of this act and the policy of this state that all resource management functions of this state be coordinated to the maximum extent with the comparable functions of the federal government, of other states and localities, and of private agencies to the end that the most effective preparation and use may be made of available man power, resources, and facilities in an emergency.

**History:** En. Sec. 2, Ch. 297, L. 1967.

**77-1503. Definition of terms.** As used in this act, unless the context clearly indicates otherwise:

(1) "Emergency Resources Management Plan" shall mean that plan prepared by the state emergency resources planning committee, approved by the federal office of emergency planning and adopted by the governor, which sets forth the organization, administration, and functions for the emergency management by the state government of essential resources and economic stabilization within the state. The plan shall provide an emergency organization and emergency administrative policies and procedures for the conservation, allocation, distribution, and use of essential resources available to the state following a civil defense emergency such as an attack upon the United States. It shall be supplemental to the national plan for emergency preparedness adopted by the president of the United States, and shall become operative upon the establishment of a civil defense emergency. To the extent that the federal government is either incapable of or not prepared to conduct its emergency resources management program, the state plan will substitute for and replace the federal program until such time as the federal program becomes effective in the state.

(2) "Enemy attack" means an actual attack by a foreign nation by hostile air raids, or other forms of warfare, upon this state or any other state or territory of the United States.

(3) "Political subdivision" shall mean any county, city, town, or township of the state.

History: En. Sec. 3, Ch. 297, L. 1967.

**77-1504. State emergency resource planning committee—composition.**

(1) The governor may establish a state emergency resource planning committee (hereinafter referred to as the "state committee") and the office of state emergency planning director (hereinafter referred to as the "director"), and appoint to serve at his pleasure the members of such state committee and the director.

(2) The state committee shall consist of the governor, who shall be chairman, the director, other state officials designated by the governor, and persons representative of industry, commerce, labor, agriculture, civic, governmental, and professional groups designated by the governor. In the absence of the governor, the director shall act as chairman.

History: En. Sec. 4, Ch. 297, L. 1967.

Office abolished and functions transferred, sec. 82A-1402(4).

**Cross-References**

Director's position abolished and functions transferred, sec. 82A-1402(5).

Planning committee abolished, sec. 82A-1404(2).

**77-1505. Governor's powers and duties under act.** (1) The governor shall have general direction and control of the emergency resources management within this state and all officers, boards, agencies, individuals, or groups established under the emergency resource management plan.

(2) In performing his duties under this act, the governor is authorized to co-operate with the federal government, with other states, and with private agencies in all matters pertaining to the emergency management of resources.

(3) In performing his duties under this act, and to effect its policies and purpose, the governor is further authorized and empowered to make, amend, and rescind the necessary orders, rules, and regulations to carry out the provisions of this act within the limits of authority conferred upon him herein, with due consideration of the emergency resources management plans of the federal government.

History: En. Sec. 5, Ch. 297, L. 1967.

**77-1506. Proclamation of emergency—governor's powers during emergency.**

(1) Following an attack, the governor, if he finds such action necessary to deal with the danger to the public safety caused thereby or to aid in the post-attack recovery or rehabilitation of the United States or any part thereof, shall declare by proclamation the existence of a post-attack recovery and rehabilitation emergency. Any such proclamation shall be ineffectual, unless the legislature is then in session or the governor simultaneously issues an order convening the legislature in special session within forty-five (45) days.

(2) During the period when the proclamation issued pursuant to subsection (1) of this section is in force, or during the continuance of any emergency declared by the president of the United States or the congress calling for post-attack recovery and rehabilitation activities, subject to



the limitations set forth in this act, and in a manner consistent with any rules, regulations, or orders and policy guidance issued by the federal government, the governor may issue, amend and enforce rules, regulations, and orders to:

(a) Control, restrict, and regulate by rationing, freezing, use of quotas, prohibitions on shipments, price fixing, allocation or other means, the use, sale or distribution of food, feed, fuel, clothing and other commodities, materials, goods or services;

(b) Prescribe and direct activities in connection with but not limited to use, conservation, salvage, and prevention of waste of materials, services, and facilities, including production, transportation, power, and communication facilities, training and supply of labor, utilization of industrial plants, health and medical care, nutrition, housing, including the use of existing and private facilities, rehabilitation, education, welfare, child care, recreation, consumer protection, and other essential civil needs; and

(c) Take such other action as may be necessary for the management of resources following an attack.

(3) All rules, regulations, and orders issued pursuant to authority conferred by this act shall have the full force and effect of law during the continuance of a proclamation or declaration of emergency as contemplated by this section, when a copy of the rule, regulation, or order is filed in the office of the secretary of state or, if issued by a local or area official, when filed in the office or offices of the county clerk and recorder. If, by reason of destruction or disruption attendant upon or resulting from attack, the filing requirements of this subsection cannot be met, public notice by such means as may be available shall be deemed a complete and sufficient substitute. All existing laws, ordinances, rules, regulations, and orders inconsistent with the provisions of this act, or any rule, regulation or order issued under the authority thereof, shall be inoperative during the period of time and to the extent such inconsistency exists.

(4) Any authority exercised pursuant to a proclamation or emergency contemplated by this section may be exercised with respect to the entire territory over which the governor or other official, as the case may be, has jurisdiction, or as to any specified part thereof.

(5) The governor's power and authority to issue a proclamation following an attack shall be terminated by the passage of a joint resolution of the legislature or by declaration of the termination of the emergency by the president or by the congress; provided that the proclamation shall terminate automatically six (6) months after issuance and a similar proclamation may not be issued unless concurrence is given thereto by a joint resolution of the legislature.

History: En. Sec. 6, Ch. 297, L. 1967.

**77-1507. Judicial inquiry as to emergency proclamation and facts.** Every proclamation and the facts related therein issued under this act shall be subject to judicial inquiry by the state supreme court as to the existence of the facts underlying the issuance of the proclamation and whether such action was reasonable under the circumstances.

History: En. Sec. 7, Ch. 297, L. 1967.

**77-1508. Penalty for violation of rules and regulations.** Any person violating any of the rules, regulations or orders adopted and promulgated under section 6 [77-1506] of this act shall, upon conviction thereof, be subject to a fine of not to exceed ten thousand dollars (\$10,000) or to a term of imprisonment of not to exceed five (5) years, or both.

**History:** En. Sec. 8, Ch. 297, L. 1967.

## TITLE 78—STATE CAPITOL

### Chapter

9. Future building needs, 78-910.
10. Employment security commission buildings, 78-1011 to 78-1030.
11. Insurance on state buildings, 78-1102, 78-1103.
12. Reconstruction and repair of public buildings and capitol building in Helena—  
construction of supreme court and law library building, 78-1201 to 78-1209.
13. Capitol building and planning committee, 78-1301 to 78-1304.

### CHAPTER 9—FUTURE BUILDING NEEDS

#### Section

78-910. Scheduling of state building program.

**78-910. Scheduling of state building program.** The state controller shall, by careful advance planning, ordering of construction priorities, consultation with architects, and timing of bid lettings, direct the building program of the state in such a manner as to reduce to a minimum the effects of weather on construction and to stabilize as far as possible the work opportunities of the construction labor force.

**History:** En. Sec. 1, Ch. 116, L. 1967.

in such a manner as to minimize the importance of weather on construction and to stabilize the work opportunities of the construction labor force.

#### Title of Act

An act to require the state controller to schedule the state's building program

### CHAPTER 10—EMPLOYMENT SECURITY COMMISSION BUILDINGS

#### Section

- 78-1011. Bond issue authorized for construction of addition to building.
- 78-1012. Architect—employment—construction and design.
- 78-1013. Bids—contractor's bond.
- 78-1014. Amount of bonds authorized.
- 78-1015. Interest rate—term—other provisions of bonds.
- 78-1016. Sale of bonds—registration.
- 78-1017. Payment of principal and interest.
- 78-1018. Employment security commission building interest and sinking fund.
- 78-1019. Purchase of bonds by board of land commissioners.
- 78-1020. Budget act not applicable.
- 78-1021. Bond issue authorized for erection of additional office buildings.
- 78-1022. Architect—employment—construction and design.
- 78-1023. Bids—contractor's bond.
- 78-1024. Amount of bonds authorized.
- 78-1025. Interest rate—term—other provisions of bonds.
- 78-1026. Sale of bonds—registration.
- 78-1027. Payment of principal and interest.
- 78-1028. Employment security commission building interest and sinking fund.
- 78-1029. Purchase of bonds by board of land commissioners.
- 78-1030. Budget act not applicable.

**78-1001. Bond issue authorized, etc.**

#### Cross-References

Name of commission changed, sec. 87-117.



**78-1011. Bond issue authorized for construction of addition to building.** The state board of examiners of the state of Montana is hereby authorized to issue and sell bonds for the purpose of constructing an addition to the employment security commission office building presently existing on the capitol building grounds, adjacent to the capitol building, namely on lots 9 through 24, inclusive in Block 20 of the Corbin addition to the city of Helena, County of Lewis and Clark, Helena, Montana, and for the purpose of landscaping and paving around said building.

**History:** En. Sec. 1, Ch. 418, L. 1971.

**Title of Act**

An act to provide for the issue and sale by the state board of examiners of bonds for the purpose of constructing an addition to the employment security commission building located on the capitol building grounds; designating the funds from which said bonds shall be paid; provid-

ing for an employment security commission building interest and sinking fund; enumerating the powers and duties of the state board of examiners in carrying out the provisions of this act; authorizing the state land board to purchase said bonds with moneys from the long-term investment funds; providing a savings clause; and providing an effective date.

**78-1012. Architect—employment—construction and design.** Upon the sale of the bonds, the state board of examiners is hereby empowered and directed to employ an architect to prepare plans and specifications, and to proceed with the constructing of an addition to the presently existing employment security commission building on the state capitol grounds, said addition to be used as office facilities by the employment security commission within the limitations prescribed by the United States department of labor, manpower administration and the United States secretary of labor.

**History:** En. Sec. 2, Ch. 418, L. 1971.

**78-1013. Bids—contractor's bond.** The state board of examiners shall call for bids for the construction of, and for the landscaping and paving around said addition to the employment security building, and let contracts for the same, all in accordance with the laws of the state of Montana. Said board shall require the contractor to give bond to the state of Montana in such amount as the board may determine, conditioned for the faithful performance of his duties and contract.

**History:** En. Sec. 3, Ch. 418, L. 1971.

**78-1014. Amount of bonds authorized.** The aggregate amount of bonds authorized by this act for the purpose of herein expressed shall not exceed the sum of four hundred ninety-nine thousand dollars (\$499,000).

**History:** En. Sec. 4, Ch. 418, L. 1971.

**78-1015. Interest rate—term—other provisions of bonds.** Bonds issued and sold by the state board of examiners under authority of this act shall bear interest at the current and prevailing interest rate, said interest to be payable semiannually. They shall be either amortization or serial bonds, shall bear such date as the state board of examiners shall prescribe, and shall be payable over such period of years, not exceeding twenty (20), as said board may specify. All bonds shall be optional and redeemable

five (5) years after the date of issue and on any interest payment date thereafter, at the option of the state board of examiners. Said bonds shall be in such denominations and sums and shall contain such recitals as the state board of examiners may determine, shall be signed by the governor, the attorney general, and the secretary of state as members of said board, and shall be paid at the office of the state treasurer of the state of Montana. The coupons attached to said bonds may bear the facsimile signature of the members of said board.

**History:** En. Sec. 5, Ch. 418, L. 1971.

**78-1016. Sale of bonds—registration.** Said bonds shall be sold by the state board of examiners at such time, in such manner, and in such amounts as the board shall deem best to carry out the provisions of this act; provided that none of such bonds shall be sold for less than par, plus accrued interest to the date of delivery of the bonds. Each of said bonds shall be registered before delivery with the state treasurer of the state of Montana, who shall keep accurate accounts of payments of interest and principal upon said bonds.

**History:** En. Sec. 6, Ch. 418, L. 1971.

**78-1017. Payment of principal and interest.** The principal and interest of the bonds authorized by this act shall be payable out of the following funds and from them only: All money credited to this state's account in the unemployment trust fund by the secretary of the treasury of the United States of America pursuant to Section 903 of the Social Security Act, as amended, and all money received from the United States secretary of labor and authorized for payment to provide office space for the central offices of the employment security commission at Helena, Montana, immediately following use of said addition to said building upon completion of erection, pursuant to Title III of the Social Security Act, as amended, shall be, and the same is hereby perpetually dedicated and appropriated for the payment of the principal and interest of the bonds provided for by this act to the extent said money may be sufficient to pay the same; provided said bonds shall be issued and sold by said state board of examiners as herein provided only for the total sum or amount necessary to be raised in excess of such total of all balances or sums that may be accrued and available from said sources for erection of said building a total of four hundred ninety-nine thousand dollars (\$499,000).

**History:** En. Sec. 7, Ch. 418, L. 1971.

**78-1018. Employment security commission building interest and sinking fund.** To provide for the payment of the interest and principal of the bonds authorized by this act, there is hereby created a special fund to be known as the employment security commission building interest and sinking fund, into which fund shall be paid all the sums of money hereinbefore dedicated and appropriated to the payment of the principal and interest of said bonds and the erection of said addition to the employment security building including the landscaping and paving around it.

**History:** En. Sec. 8, Ch. 418, L. 1971.

**78-1019. Purchase of bonds by board of land commissioners.** The state board of land commissioners is hereby authorized to purchase the bonds provided for by this act with moneys from the long-term investment fund notwithstanding the provisions of sections 81-1001 and 81-1006 of the Revised Codes of Montana, 1947.

**History:** En. Sec. 9, Ch. 418, L. 1971.

**78-1020. Budget act not applicable.** The appropriation herein provided for shall be deemed and held valid notwithstanding the provisions of the budget act.

**History:** En. Sec. 10, Ch. 418, L. 1971.

**Separability Clause**

Section 11 of Ch. 418, Laws 1971 read "Every section of this act and every part of each section is hereby declared to be independent of each other, and the holding of any section or part hereof to be void or ineffective for any cause shall not be

deemed to affect any other section or part hereof."

**Effective Date**

Section 12 of Ch. 418, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 18, 1971.

**78-1021. Bond issue authorized for erection of additional office buildings.** The state board of examiners of the state of Montana is hereby authorized to issue and sell bonds for the purpose of purchasing land, landscaping and paving said land as is necessary and for the purpose of erecting employment security commission office buildings in the following locations:

Employment security commission (employment service building), Great Falls, Montana.

Employment security commission (employment service building), addition, Billings, Montana.

Employment security commission (employment service building), Missoula, Montana.

Employment security commission (employment service building), Helena, Montana.

**History:** En. Sec. 1, Ch. 419, L. 1971.

**Title of Act**

An act to provide for the issue and sale by the state board of examiners of long-term bonds for the purpose of erecting employment security commission office buildings within the state of Montana, designating the funds from which said bonds shall be paid; providing for employ-

ment security commission interest and sinking funds; enumerating the powers and duties of the state board of examiners in carrying out the provisions of this act; authorizing the state land board to purchase said bonds with moneys from the long-term investment funds; providing a savings clause; and providing an effective date.

**78-1022. Architect—employment—construction and design.** Upon the sale of the bonds, the state board of examiners is hereby empowered and directed to employ architects to prepare plans and specifications, and to proceed with the erection of buildings of suitable construction and design for use as employment security commission buildings within the limitations prescribed by the United States department of labor, manpower administration and the United States secretary of labor.

**History:** En. Sec. 2, Ch. 419, L. 1971.



**78-1023. Bids—contractor's bond.** The state board of examiners shall call for bids for the construction of said buildings and for the landscaping and paving around them, and let contracts for the same, all in accordance with the laws of the state of Montana. Said board shall require each prime contractor to give bond to the state of Montana in such amount as the board may determine, conditioned for the faithful performance of his duties and contracts.

**History:** En. Sec. 3, Ch. 419, L. 1971.

**78-1024. Amount of bonds authorized.** The aggregate amount of bonds authorized by this act for the purpose herein expressed shall not exceed the sum of one million fifty-five thousand nine hundred and twenty-eight dollars (\$1,055,928).

**History:** En. Sec. 4, Ch. 419, L. 1971.

**78-1025. Interest rate—term—other provisions of bonds.** Bonds issued and sold by the state board of examiners under authority of this act shall bear interest at the prevailing rate payable annually. They shall be either amortization or serial bonds, shall bear such date as the state board of examiners shall prescribe, and shall be payable over such period of years, not exceeding twenty (20), as said board may specify. All bonds shall be optional and redeemable five (5) years after the date of issue and on any interest payment date thereafter, at the option of the state board of examiners. Said bonds shall be in such denominations and sums and shall contain such recitals as the state board of examiners may determine, shall be signed by the governor, the attorney general, and the secretary of state as members of said board, and shall be paid at the office of the state treasurer of the state of Montana.

**History:** En. Sec. 5, Ch. 419, L. 1971.

**78-1026. Sale of bonds—registration.** Said bonds shall be sold by the state board of examiners at such time, in such manner, and in such amounts as the board shall deem best to carry out the provisions of this act; provided that none of such bonds shall be sold for less than par, plus accrued interest to the date of delivery of the bonds. Each of said bonds shall be registered before delivery with the state treasurer of the state of Montana, who shall keep accurate accounts of payments of interest and principal upon said bonds.

**History:** En. Sec. 6, Ch. 419, L. 1971.

**78-1027. Payment of principal and interest.** The principal and interest of the bonds authorized by this act shall be payable out of the following funds and from them only: All money credited to this state's account in the unemployment trust fund by the secretary of the treasury of the United States of America pursuant to section 903 of the Social Security Act, as amended, and all money received from the United States secretary of labor and authorized for payment to provide office space for the central offices of the employment security commission at Helena, Montana, immediately following occupancy of said buildings upon completion of

erection, pursuant to Title III of the Social Security Act, as amended, shall be, and the same is hereby perpetually dedicated and appropriated for the payment of the principal and interest of the bonds provided for by this act to the extent said money may be sufficient to pay the same; provided said bonds shall be issued and sold by said state board of examiners as herein provided only for the total sum or amount necessary to be raised in excess of such total of all balances or sums that may be accrued and available from said sources for erection of said building a total of one million fifty-five thousand nine hundred and twenty-eight dollars (\$1,055,928).

**History:** En. Sec. 7, Ch. 419, L. 1971.

**78-1028. Employment security commission building interest and sinking fund.** To provide for the payment of the interest and principal of the bonds authorized by this act, there is hereby created a special fund to be known as the employment security commission building interest and sinking fund, into which fund shall be paid all the sums of money hereinbefore dedicated and appropriated to the payment of the principal and interest of said bonds and the erection of said buildings including the landscaping and paving around them.

**History:** En. Sec. 8, Ch. 419, L. 1971.

**78-1029. Purchase of bonds by board of land commissioners.** The state board of land commissioners is hereby authorized to purchase the bonds provided for by this act with moneys from the long-term investment fund notwithstanding the provisions of sections 81-1001 and 81-1006, R. C. M. 1947.

**History:** En. Sec. 9, Ch. 419, L. 1971.

**78-1030. Budget act not applicable.** The appropriation herein provided for shall be deemed and held valid notwithstanding the provisions of the Budget Act.

**History:** En. Sec. 10, Ch. 419, L. 1971.

#### **Separability Clause**

Section 11 of Ch. 419, Laws 1971 read "Every section of this act and every part of each section is hereby declared to be independent of each other, and the holding of any section or part hereof to be void or ineffective for any cause shall not be

deemed to affect any other section or part hereof."

#### **Effective Date**

Section 12 of Ch. 419, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 18, 1971.

### **CHAPTER 11—INSURANCE ON STATE BUILDINGS**

#### **Section**

78-1102. Deductible insurance plan for state buildings and contents.

78-1103. Administration of deductible insurance plan.

**78-1102. Deductible insurance plan for state buildings and contents.** A deductible plan of insurance may be established for use by the state in insuring state buildings and their contents.

**History:** En. Sec. 1, Ch. 86, L. 1971.

insurance for state buildings and their contents.

**Title of Act**

An act to provide a deductible plan of

**78-1103. Administration of deductible insurance plan.** The administration of this act shall be placed in the department of administration with the co-operation of the insurance commissioner.

**History:** En. Sec. 2, Ch. 86, L. 1971.

CHAPTER 12—RECONSTRUCTION AND REPAIR OF PUBLIC BUILDINGS  
AND CAPITOL BUILDING IN HELENA—CONSTRUCTION OF SUPREME  
COURT AND LAW LIBRARY BUILDING

**Section**

78-1201. Borrowing of state funds authorized.

78-1202. Employment of architects and engineers—approval of plans and specifications.

78-1203. Acquisition of land—bids and contracts—bonds.

78-1204. Maximum borrowing power—deposit of moneys.

78-1205. Terms of bonds, indentures, and notes.

78-1206. Sale of bonds, indentures, and notes—registration and accounts.

78-1207. Funds available for repayment of obligations.

78-1208. Moneys deposited in sinking fund.

78-1209. Budget act inapplicable.

**78-1201. Borrowing of state funds authorized.** In order to provide for land acquisition for public buildings at the state capital; the reconstruction, improvement, remodeling, repair and furnishing of the state capitol building of the state of Montana at Helena, Montana; for the construction of a supreme court building and state library building, the state board of examiners of the state of Montana is authorized to borrow sums of money from time to time from the unpledged investment funds available to any state agency or division of government, and to issue bonds, indentures or notes therefor.

**History:** En. Sec. 1, Ch. 375, L. 1969.

**Title of Act**

An act authorizing the state board of examiners to borrow up to two million dollars (\$2,000,000) for land acquisition for public buildings at the state capitol; for the reconstruction, improvement, remodeling, repair and furnishing of the state capitol building of the state of Montana at Helena, Montana; for construction

of a supreme court and law library building; providing for the issuance of bonds, indentures and/or notes; dedicating income from capitol building land grant for repayment of loans; enumerating the power and duties of the state board of examiners in carrying out the provisions of this act; and providing for a select committee of the house of representatives and senate relating thereto.

**78-1202. Employment of architects and engineers—approval of plans and specifications.** With the approval of the state board of examiners, the state controller is hereby authorized, directed and empowered to employ an architect or architects, an engineer or engineers for such period of time as he may deem proper for the purpose of making the necessary studies and preparing complete plans and specifications for the purposes set forth in section 1 [78-1201] of this act; to proceed with the reconstruction, improvement, remodeling, repair and furnishing of the state capitol building and to proceed with the construction of the supreme court



and law library building. The plans and specifications of said architect or architects, engineer or engineers shall be approved by a select committee comprised of four (4) members of the house of representatives, not more than two (2) from either political party, appointed by the speaker; and four (4) members of the senate, not more than two (2) from either political party, appointed by the committee on committees.

**History:** En. Sec. 2, Ch. 375, L. 1969.

**78-1203. Acquisition of land—bids and contracts—bonds.** The board of examiners and the state controller shall purchase or condemn the lands described in section 1 [78-1201] of this act upon the advice of the select committee. The state board of examiners shall call for bids for the construction of the supreme court building and the state library building, and for the reconstruction, improvement, remodeling, repair, and furnishing of the state capitol building and shall let contracts for the same, all in accordance with the laws of the state of Montana. Said board shall require the contractors to give bonds to the state of Montana in such amounts as the board may determine, conditioned for the faithful performance of their duties and contracts.

**History:** En. Sec. 3, Ch. 375, L. 1969.

**78-1204. Maximum borrowing power—deposit of moneys.** The aggregate amount which the state board of examiners is authorized to borrow under this act for the purposes herein expressed shall not be in excess of the sum of two million dollars (\$2,000,000). All moneys borrowed or realized from the sale of bonds authorized by this act shall be deposited in the capitol building program account, bond proceeds and insurance clearance fund.

**History:** En. Sec. 4, Ch. 375, L. 1969.

**78-1205. Terms of bonds, indentures, and notes.** The bonds, indentures and/or notes issued by the state board of examiners under authority of this act shall not bear interest at a rate in excess of four and one-half per cent (4½%) per annum payable semiannually. They shall bear such date as the state board of examiners shall prescribe, and shall be payable over such period of years, not exceeding twenty-five (25), as said board may specify. All bonds, indentures and/or notes shall be optional and redeemable at any time after the date of issue, at the option of the state board of examiners. Said bonds, indentures and/or notes shall be in such denominations and sums and shall contain such recitals as the state board of examiners may determine, shall be signed by the governor, the attorney general, and the secretary of state as members of said board, and shall be paid at the office of the state treasurer of the state of Montana. Coupons attached to any such bonds may bear the facsimile signature of the members of said board.

**History:** En. Sec. 5, Ch. 375, L. 1969.

**78-1206. Sale of bonds, indentures, and notes—registration and accounts.** Said bonds, indentures and/or notes shall be sold by the state

board of examiners at such time and in such manner as the board shall deem best to carry out the provisions of this act; provided that none of such bonds shall be sold for less than par, plus accrued interest to the date of delivery of the bonds. Each of said bonds, indentures and/or notes shall be registered before delivery with the state treasurer of the state of Montana, who shall keep accurate accounts of payments of interest and principal upon said bonds, indentures and/or notes.

**History:** En. Sec. 6, Ch. 375, L. 1969.

**78-1207. Funds available for repayment of obligations.** The principal and interest of the bonds, indentures and/or notes authorized by this act shall be payable out of the following fund and from it only: As much as may be necessary from the income received subsequent to January 1, 1970, from the capitol building land grant shall be, and the same is hereby dedicated and appropriated for the repayment of the principal and interest of the bonds, indentures and/or notes provided for by this act.

**History:** En. Sec. 7, Ch. 375, L. 1969.

**78-1208. Moneys deposited in sinking fund.** To provide for the payment of the interest and principal of the bonds, indentures and/or notes authorized by this act, all the sums of money hereinbefore dedicated and appropriated to the payment of the principal and interest of said bonds, indentures and/or notes shall be paid and deposited in the sinking fund in the state treasury.

**History:** En. Sec. 8, Ch. 375, L. 1969.

**78-1209. Budget act inapplicable.** The appropriation herein provided for shall be deemed and held valid notwithstanding the provisions of the budget act.

**History:** En. Sec. 9, Ch. 375, L. 1969.

#### **Separability Clause**

Section 10 of Ch. 375, Laws 1969 read "Every section of this act and every part of each section is hereby declared to be

independent of each other, and the holding of any section or part hereof to be void or ineffective for any cause shall not be deemed to affect any other section or part hereof."

### **CHAPTER 13—CAPITOL BUILDING AND PLANNING COMMITTEE**

#### **Section**

78-1301. Committee created—composition—meetings.

78-1302. Function of committee—factors to be considered in master plan.

78-1303. Report to legislature.

78-1304. Per diem and mileage.

**78-1301. Committee created—composition—meetings.** There is hereby created a committee to be composed of seven (7) members: two (2) members of the house of representatives, appointed by the speaker on a bipartisan basis; two (2) members of the senate, appointed by the committee on committees; on a bipartisan basis the state controller; the chairman of the city-county planning board for the city of Helena and county of Lewis and Clark, and the secretary of state. A chairman shall be selected

by the members at the first meeting which shall be on or about July 9, 1971. Subsequent meetings may be called by the chairman at his discretion.

**History:** En. Sec. 1, Ch. 232, L. 1971.

**Title of Act**

**Compiler's Notes**

The fifth line of this section is punctuated as it was in the enrolled act. However, it would appear that the first semicolon in the fifth line should have followed "bipartisan basis" rather than "committees."

An act to create a capitol building and planning committee, establishing functions and guidelines under the general supervision of this legislative council; and providing an immediate effective date.

**78-1302. Function of committee—Factors to be considered in master plan.** Function of the committee will be to establish a master plan for the orderly development of future state buildings in the state capitol area of the city of Helena, Montana. In evolving the master plan the committee shall take into consideration the following factors:

(a) The needs of the state relative to the location and design of buildings to be constructed, purchase of land, parking facilities, traffic management and landscaping, including placement of statues, monuments, fountains or exterior lighting of buildings as may be deemed desirable for the beautification of the area.

(b) The ordinances, plans, requirements and proposed improvements of the city of Helena and the county of Lewis and Clark, including but not limited to zoning regulations, population trends and plans for rapid transit development.

(c) Any other factors which bear upon the orderly, integrated and co-operative development of the state, the city of Helena and the county of Lewis and Clark, of property in the area of the state capitol.

**History:** En. Sec. 2, Ch. 232, L. 1971.

**78-1303. Report to legislature.** The committee shall prepare a written report of its activities and recommendations and present the report to the succeeding legislature, under the general supervision of the legislative council.

**History:** En. Sec. 3, Ch. 232, L. 1971.

**78-1304. Per diem and mileage.** Legislative members are entitled to twenty dollars (\$20) a day and mileage for days actually engaged in the work of the committee.

**History:** En. Sec. 4, Ch. 232, L. 1971.

**Effective Date**

Section 5 of Ch. 232, Laws 1971 pro-

vided the act should be in effect from and after its passage and approval. Approved March 9, 1971.



## TITLE 79—STATE FINANCE

### Chapter

1. General fiscal duties of state auditor, 79-101, 79-102, 79-108, 79-109.
2. General fiscal duties of state treasurer, 79-201, 79-202.
3. State depository board—deposit and investment of state funds, 79-301.
4. Treasury fund structure, 79-414, 79-415.
6. Perpetual appropriations for support of state institutions—contingent revolving accounts, 79-602, 79-603.
10. State Budget Act, 79-1012, 79-1013.
12. Montana trust and legacy fund—unified investment plan, 79-1202.
20. Bond Validating Act, 79-2001 to 79-2004.
22. Long-range building program bonds, 79-2202, 79-2203, 79-2205.
23. Legislative Audit Act, 79-2301 to 79-2312.
24. State board of review—reimbursement of general fund for costs of central services, 79-2401 to 79-2415.
25. Emergency and disaster fund, 79-2501 to 79-2503.
26. Interest on bonds and special assessments of political subdivisions, 79-2601 to 79-2603.

### CHAPTER 1—GENERAL FISCAL DUTIES OF STATE AUDITOR

#### Section

- 79-101. State auditor—general fiscal duties.
- 79-102. Certificate of settlement.
- 79-108. Warrants—presentation—cancellation.
- 79-109. Issuance of duplicate warrant.

**79-101. (151) State auditor—general fiscal duties.** It is the duty of the state auditor:

1. To superintend the fiscal concerns of the state.
2. When requested, to give information in writing to either house of the legislative assembly relating to the fiscal affairs of the state or the duties of his office.
3. To suggest plans for the improvement and management of the public revenues.
4. To keep an account of all warrants drawn upon the treasurer, and such other account and appropriation records that he determines to be essential for the support of the accounting records maintained in the office of the state controller.
5. To keep an account between the state and the state treasurer, and therein charge the state treasurer with the balance in the treasury when he came into office, and with all moneys, received by him, and credit him with all warrants drawn on and paid by him.
6. To keep a register of warrants, showing the fund upon which they are drawn, the number, in whose favor, and the date issued.
7. In his discretion to examine and settle the accounts of persons indebted to the state, and certify the amount to the treasurer, and upon presentation and filing of the treasurer's receipt therefor, to give such person a discharge and charge the treasurer therewith.

8. In his discretion to require any person presenting an account for settlement to be sworn before him, and to answer, orally or in writing, as to any facts relating to it.

9. To require all persons who have received any moneys belonging to the state, and have not accounted therefor, to settle their accounts.

10. In his discretion to inspect the books of any persons charged with the receipt, safekeeping, or disbursement of public moneys.

11. In his discretion to require all persons who have received moneys or securities, or have had the disposition or management of any property of the state of which an account is kept in his office, to render statements thereof to him; and all such persons must render statements at such times and in such form as he may require.

12. In his discretion to examine the collection of moneys due the state, and institute suits in its name for official delinquencies in relation to the assessment, collection, and payment of the revenue, and against persons who by any means have become possessed of public money or property, and failed to pay over or deliver the same, and against debtors of the state; of which suits the courts of the county in which the seat of government may be located have jurisdiction, without regard to the residence of the defendants.

13. In his discretion, to offset any amount due a state agency from a person or entity, against any amount owing such person or entity by any state agency. The state auditor may deduct from the claim, and draw his warrants for the amounts offset in favor of the respective state agencies to which due, and, for any balance, in favor of the claimant. Whenever insufficient to offset all amounts due state agencies, the amount available shall be applied in such manner as the state auditor, in his discretion, shall determine. If, in the discretion of the state auditor, the person or entity refuses or neglects to file his claim within a reasonable time, the head of the state agency owing the amount shall file the claim on behalf of such person or entity; if approved by the state controller it shall have the same force and effect as though filed by such person or entity. The amount due any person or entity from the state or any agency thereof is the net amount otherwise owing such person or entity after any offset as in this section provided.

14. To draw warrants on the state treasurer for the payment of moneys directed by law to be paid out of the treasury; but no warrant must be drawn unless authorized by law.

15. To authenticate with his official seal all warrants drawn by him, and all copies of papers issued from his office.

16. In his discretion promulgate rules and regulations regarding the distribution and processing of warrants issued.

17. In his discretion establish a cost accounting system to determine the unit cost of issuing and processing warrants and provide for a system of charges for services rendered in issuing and processing warrants for claims submitted by any department or agency of the state. No such charge shall be made for warrants issued against the general fund. Funds collected under this section for budgeted programs shall be deposited to the

credit of the general fund. Funds collected for new or unforeseen programs may be deposited to the credit of a revolving fund account and expended for the purposes of paying the processing expenses incurred as a result of the new program.

18. To collect and pay into the state treasury all fees received by him.

19. To perform such other duties as are prescribed by law.

20. In his discretion to establish, under the joint control of the state controller and the state auditor, a system of filing and storage of the original copy of claims paid by state warrant.

**History:** En. Sec. 420, Pol. C. 1895; re-en. Sec. 170, Rev. C. 1907; re-en. Sec. 151, R. C. M. 1921; amd. Sec. 1, Ch. 94, L. 1969. Cal. Pol. C. Sec. 433.

#### Amendments

The 1969 amendment deleted former subdivisions 2, 3, 6, 10, 18, and 19, for text of which see parent volume; redesignated former subdivisions 4 and 5 as 2 and 3; redesignated former subdivision 7 as 4 and substituted "and such other account \* \* \* state controller" for "and a separate account under the head of each specific appropriation, showing at all times the unexpended balance of such appropriation"; redesignated former subdivision 8 as 5; redesignated former subdivision 9 as 6, and substituted "and the date issued" for "for what service, the appropriation applicable to the payment thereof, when the liability accrued, and a receipt from the person to whom the warrant is delivered"; redesignated

former subdivision 11 as 7, and inserted "In his discretion" at the beginning; redesignated former subdivisions 12 through 15 as 8 through 11; redesignated former subdivision 16 as 12, and substituted "In his discretion to examine" for "To direct and superintend" at the beginning and deleted "all" before "moneys" and "debtors"; inserted new paragraph 13; redesignated former subdivision 17 as 14, and deleted "and upon an unexhausted specific appropriation provided by law to meet the same. Every warrant must be drawn upon the fund out of which it is payable, and specify the service for which it is drawn, when the liability accrued, and the specific appropriation applicable to the payment thereof"; redesignated former subdivision 20 as 15, and deleted "drafts and" before "warrants drawn"; inserted new subdivisions 16 and 17; redesignated former subdivisions 21 and 22 as 18 and 19; and added new subdivision 20.

**79-102. (152) Certificate of settlement.** The certificate mentioned in subdivision 7, of section 79-101, must show by whom the payment is to be made; the amount thereof, and the fund into which it is to be paid, and must be numbered in order, beginning with number 1 at the commencement of each fiscal year.

**History:** En. Sec. 421, Pol. C. 1895; re-en. Sec. 171, Rev. C. 1907; re-en. Sec. 152, R. C. M. 1921; amd. Sec. 2, Ch. 94, L. 1969. Cal. Pol. C. Sec. 434.

#### Amendments

The 1969 amendment substituted "subdivision 7" for "subdivision 11" before "of section 79-101."

#### 79-107. Repealed.

##### Repeal

Section 79-107 (Sec. 427, Pol. C. 1895), relating to auditor's execution of an of-

ficial bond, was repealed by Sec. 5, Ch. 94, Laws 1969.

**79-108. (158) Warrants — presentation — cancellation.** All warrants drawn by the state auditor on the state treasury shall be presented for payment within one (1) year after the date of the issue thereof. Should the payee or legal holder of any warrant fail to present it for payment within the time specified, the state auditor shall enter the same as canceled on the books of his office and the amount shall be credited to the account from which it was drawn. Should the payee or legal owner of any canceled warrant present it for payment, or in the event the warrant has



been lost or destroyed, the payee present a claim for payment, after the lapse of one (1) year from the date of issue, the state auditor may, upon proper showing by affidavit, issue a new warrant in lieu thereof, and the state treasurer is authorized to pay the new warrant. The state auditor shall furnish the state treasurer with a list of warrants canceled under the provisions of this section.

**History:** En. Sec. 1, Ch. 80, L. 1907; Sec. 178, Rev. C. 1907; re-en. Sec. 158, R. C. M. 1921; amd. Sec. 3, Ch. 94, L. 1969.

#### Amendments

The 1969 amendment rewrote this section to extend time for presenting warrants from six months to one year. For previous text, see parent volume.

**79-109. (159) Issuance of duplicate warrant.** A. The state auditor is hereby empowered and authorized to issue a duplicate warrant whenever any warrant drawn by him upon the treasurer of the state of Montana shall have been lost or destroyed. This duplicate warrant must be in the same form as the original, except that it must have plainly printed across its face the word "duplicate," and, except as herein provided, no such warrant shall be issued or delivered, except the person entitled to receive the same shall deposit with the state auditor a bond in double the amount for which the duplicate warrant is issued, conditioned to save the state of Montana, and its officers, harmless on account of the issuance of said duplicate warrant.

B. No bond of indemnity shall be required:

(1) When the payee is the United States government, a state of the United States, any agency, instrumentality or officer of the United States government or of a state, or any county, city, city and county, town, district, or other political subdivision of a state or any officer thereof;

(2) When the owner or custodian is the state of Montana or any agency or officer thereof;

(3) When the owner or custodian is a bank, savings and loan association, admitted insurer, or trust company whose financial condition is regulated by the United States government or by the state of Montana; or

(4) When the amount of the lost or destroyed warrant is less than fifty dollars (\$50);

Provided, however, that where the owner or custodian applies under the provisions of subsection (3) or (4) hereof, the application shall include an agreement to indemnify and hold harmless the state, its officers and employees, from any loss resulting from the issuance of a duplicate warrant. Any loss incurred in connection with the issuance of a duplicate warrant shall be charged against the account from which the payment was derived.

**History:** En. Sec. 1, Ch. 19, L. 1909; re-en. Sec. 159, R. C. M. 1921; amd. Sec. 4, Ch. 94, L. 1969.

#### Amendments

The 1969 amendment designated the former section as subsection A, inserted "except as herein provided" before "no such

warrant" and deleted "by the state auditor" after "issued or delivered" in the second sentence; and added subsection B.

#### Repealing Clause

Section 5 of Ch. 94, Laws 1969 read "Section 79-107, R. C. M. 1947, is repealed."

**Effective Date**

Section 6 of Ch. 94, Laws 1969 provided the act should be in effect from and after

its passage and approval. Approved February 24, 1969.

## CHAPTER 2—GENERAL FISCAL DUTIES OF STATE TREASURER

**Section**

79-201. State treasurer—general fiscal duties.

79-202. State moneys, how expended by treasurer.

**79-201. (174) State treasurer—general fiscal duties.** The state treasurer shall be the custodian of all moneys and securities of the state unless otherwise expressly provided by law, and it is the duty of the state treasurer:

1. To receive and account for all moneys belonging to the state, not expressly required by law to be received and kept by some other person.

2. To issue receipts which must be consecutively numbered beginning with number one at the commencement of each fiscal year for all sums of money which shall be paid into the treasury, and to deliver a copy of every such receipt to the person making such payment, the state auditor and the state controller.

3. To pay warrants out of the funds upon which they are drawn.

4. Upon payment of any warrant, to take upon the back thereof the receipt of the person to whom it is paid.

5. To keep an account of all moneys received and disbursed.

6. At the request of either house of the legislative assembly, or of any committee thereof, to give information in writing as to the condition of the treasury, or upon any subject relating to the duties of his office.

7. To discharge such other duties as may be imposed upon him by law.

**History:** En. Sec. 440, Pol. C. 1895; re-en. Sec. 179, Rev. C. 1907; re-en. Sec. 174, R. C. M. 1921; amd. Sec. 8, Ch. 147, L. 1963; amd. Sec. 1, Ch. 152, L. 1971. Cal. Pol. C. Sec. 452.

**Amendments**

The 1971 amendment inserted "The state treasurer shall be the custodian of all moneys and securities of the state unless otherwise expressly provided by law, and" at the beginning of the section; substituted "account for" for "keep" in subdivision (1); substituted "not expressly required by law" for "and not required" in sub-

division (1); deleted a former subdivision (2), for text of which see parent volume; substituted a new subdivision (2) for former subdivision (3), for text of which see parent volume; redesignated former subdivisions (4), (5) and (6) as (3), (4) and (5); deleted "and in the order" before "in which they are drawn" at the end of subdivision (3); deleted "and file and preserve the same" from the end of subdivision (4); deleted former subdivisions (7), (8), (10) and (11) for text of which see parent volume; and redesignated former subdivisions (9) and (12) as subdivisions (6) and (7), respectively.

**79-202. (193) State moneys, how expended by treasurer.** Except as herein provided no moneys received by the state treasurer shall be paid out by him except upon state warrant issued by the state auditor, and the state auditor shall not issue his warrant upon the state treasurer except upon a claim duly approved by the state controller in accordance with the laws governing the expenditure of state moneys; however, interest and principal on the public debt may be paid by treasurer's check from the moneys pledged for such payment, and the provisions of this section shall

not apply to warrants issued upon contingent revolving accounts that are in the custody of the state treasurer.

**History:** En. Sec. 2, Ch. 112, L. 1921; re-en. Sec. 193, R. C. M. 1921; amd. Sec. 6, Ch. 97, L. 1961; amd. Sec. 2, Ch. 152, L. 1971.

#### Amendments

The 1971 amendment inserted "Except as herein provided" at the beginning of the section; and substituted "except upon a claim duly approved by the state controller in accordance with the laws governing the expenditure of state moneys; however, interest and principal on the public debt may be paid by treasurer's check from the moneys pledged for such payment, and the provisions of this section shall not apply to warrants issued upon contingent revolving accounts that are in the custody of the state treasurer" at the end of the section for "save by virtue of unexhausted appropriations therefor made by the legislative assembly, and after the

presentation to him of a claim duly approved by the state controller, save and except for salaries and compensation of officers fixed by law; provided, however, that nothing in this act contained shall require an appropriation by the legislature for the administering of any specific trust funds administered by any state board, commission or department."

#### Repealing Clause

Section 3 of Ch. 152, Laws 1971 read "Sections 79-801, 79-804, 79-806, 79-807, 79-808, and 79-810, R. C. M., 1947, are repealed."

#### Effective Date

Section 4 of Ch. 152, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 1, 1971.

### CHAPTER 3—STATE DEPOSITORY BOARD—DEPOSIT AND INVESTMENT OF STATE FUNDS

#### Section

79-301 State depository board—funds in the hands of the state treasurer.

**79-301. (182) State depository board—funds in the hands of the state treasurer. (1). \* \* \* [Same as parent volume.]**

(2) No deposits in excess of the amount guaranteed or insured according to law shall be made of state funds by said depository board, or by the state treasurer under the direction of said board, unless such bank shall first have delivered to the state treasurer or trustee with some solvent bank as hereinafter provided, as security therefor, cashier's check or checks issued by the Federal Reserve Bank, bonds of the United States government and its dependents, bonds guaranteed by the United States government or its dependents, bonds and warrants of the state of Montana, bonds and warrants of any county of the state of Montana, and bonds of any city, town or school district of the state of Montana, which are a general obligation of such county, city, town or school district, bonds of the Federal Land Banks, Federal Intermediate Credit Bank debentures, Federal Home Loan Bank notes and bonds, Bank for Co-operatives' debentures, Federal National Mortgage Association notes, bonds and guaranteed certificates of participation, obligations of or fully guaranteed by the Government National Mortgage Association, Farmers' Home Administration insured notes, notes fully guaranteed as to principal and interest by the Small Business Administration, Federal Housing Administration debentures, general obligation bonds of other states and counties of other states and bonds issued in the United States of America, which are quoted on the New York market which shall be acceptable at not to exceed ninety per centum (90%) of such market quotation, in at least the amount of



such deposits in excess of the amount guaranteed or insured according to law, which bonds or security shall be first approved by the state depository board; provided, that the state depository board may require security in a greater amount than that above named; provided, that when negotiable securities are furnished, such securities may be placed in trust and the trustees' receipt may be accepted in lieu of the actual securities when such receipt is in favor of the state treasurer, his successors in office, and the state of Montana, and the form of receipt and the trustees have been approved by the state examiner.

(3) to (5). \* \* \* [Same as parent volume.]

**History:** Ap. p. 183, Rev. C. 1907; en. Sec. 1, Ch. 129, L. 1909; re-en. Sec. 182, R. C. M. 1921; amd. Sec. 1, Ch. 85, L. 1923; amd. Sec. 1, Ch. 180, L. 1929; amd. Sec. 1, Ch. 62, L. 1935; amd. Sec. 1, Ch. 35, L. 1963; amd. Sec. 1, Ch. 259, L. 1969.

#### Amendments

The 1969 amendment, in subsection (2), deleted "bonds of the Federal Land Banks" after "United States government or its de-

pendents"; substituted "bonds of the Federal Land Banks, Federal Intermediate Credit Bank \* \* \* of such market quotation" for "or bonds of some good solvent surety company authorized to do business in the state of Montana" before "in at least the amount of such deposits."

#### Cross-References

Depository board and treasurer's investment functions transferred, sec. 82A-205 (2).

### 79-303, 79-304. (182.1) Repealed.

#### Repeal

Sections 79-303 and 79-304 (Sec. 1, Ch. 64, L. 1935; Sec. 1, Ch. 81, L. 1937; Sec. 1, Ch. 68, L. 1941; Sec. 1, Ch. 101, L.

1945; Secs. 4, 5, Ch. 176, L. 1953; Sec. 10, Ch. 147, L. 1963), relating to investment of state funds, were repealed by Sec. 2, Ch. 205, Laws 1971.

## CHAPTER 4—TREASURY FUND STRUCTURE

#### Section

79-414. Maintenance of fund and account records—appropriations and transfers—accounting procedures.

79-415. Appropriation and disbursement of moneys from the treasury.

**79-414. Maintenance of fund and account records—appropriations and transfers—accounting procedures.** (1) and (2) \* \* \* [Same as parent volume.]

(3) When the expenditure of an appropriation is necessary, and the cash balance in the account from which the appropriation was made is insufficient, the state controller may authorize a transfer, as a temporary loan bearing no interest, of unrestricted moneys from other accounts, provided that there is reasonable evidence that the income provided for the remainder of the fiscal year will be sufficient to restore the amount so transferred, and provided the loan is recorded in the state accounting records. No account shall be so impaired that all proper demands thereon cannot be met.

(4) When moneys have been appropriated from several sources for the operation of a state agency, the state controller may establish an account to receive, hold and disburse moneys appropriated for the operation of the agency and regulate the transfer of moneys to the account in accordance with the laws governing the expenditure of state moneys.

**History:** En. Sec. 6, Ch. 147, L. 1963;  
amd. Sec. 1, Ch. 268, L. 1971.

**Amendments**  
The 1971 amendment added subsections (3) and (4).

**79-415. Appropriation and disbursement of moneys from the treasury.**

(1) Moneys deposited in the general fund, the earmarked revenue fund, the revolving fund, and the federal and private revenue fund, with the exception of trust income and refunds authorized in subsection (3) of this act, shall be paid out of the treasury only on appropriation made by law.

(2) \* \* \* [Same as parent volume.]

(3) Money paid into the state treasury through error or under circumstances such that the state is not legally entitled to retain it, and a refund procedure is not otherwise provided by law, may be refunded upon the submission of a verified claim approved by the state controller.

(4) For the purpose of supplying deficiencies in the general fund, the state treasurer may temporarily borrow from other treasury funds, providing that the loan is recorded in the state accounting records. Such loan shall bear no interest and no fund shall be so impaired that all proper demands thereon cannot be met.

**History:** En. Sec. 7, Ch. 147, L. 1963;  
amd. Sec. 2, Ch. 268, L. 1971.

funds authorized in subsection (3) of this act" in subsection (1); and added subsections (3) and (4).

**Amendments**

The 1971 amendment inserted "and re-

**CHAPTER 6—PERPETUAL APPROPRIATIONS FOR SUPPORT OF STATE INSTITUTIONS—CONTINGENT REVOLVING ACCOUNTS**

**Section**

79-602. Contingent revolving accounts—when established.

79-603. State agencies may retain certain moneys, when.

**79-602. (195) Contingent revolving accounts—when established.** The state controller may authorize the establishment and maintenance at any and all of the state institutions, or in any of the departments, boards, or commissions, of Montana of contingent revolving accounts, transferring in trust to the business offices of said institutions such sums of money as may appear necessary, to be used by said institutions for the payment of demands requiring immediate cash payment, such as payment of minor invoices, invoices for which discount period is too short to take advantage of the discount if payment is made by warrant, freight and express charges, travel advances, postage, publications requiring remittance to accompany the order, and the establishment of cash change funds, all under specific regulations to be established by the state controller. But each and every state institution granted a contingent revolving account shall report to the state controller monthly all transactions involving such contingent revolving accounts, with proper vouchers for every payment made therefrom. The state controller may cancel such authorizations and recall such funds at pleasure.

**History:** En. Sec. 4, Ch. 112, L. 1921; 9, Ch. 80, L. 1961; amd. Sec. 1, Ch. 148, L. re-en. Sec. 195, R. C. M. 1921; amd. Sec. 1969.

**Amendments**

The 1969 amendment inserted "such as payment of minor invoices \* \* \* cash

change funds, all" after "demands requiring immediate cash payment" in the first sentence.

**79-603. (196) State agencies may retain certain moneys, when.** The state controller may in his discretion permit any state agency to retain in its possession, under such conditions as the state controller may prescribe, moneys that would otherwise be deposited in the agency fund as defined in the treasury fund structure act. The state controller may cancel such permission and require the deposit of any or all such moneys with the state treasurer at his pleasure, provided, however, that the state treasurer, with the consent of the state depository board, shall designate depositories for such moneys and securities, and require indemnifying bonds or pledged securities sufficient to adequately and properly secure the amounts deposited in said depositories.

**History:** En. Sec. 5, Ch. 112, L. 1921; re-en. Sec. 196, R. C. M. 1921; amd. Sec. 2, Ch. 157, L. 1931; amd. Sec. 12, Ch. 147, L. 1963; amd. Sec. 3, Ch. 268, L. 1971.

**Amendments**

The 1971 amendment substituted "agen-

cy" for "institution" in the first sentence; substituted "moneys that \* \* \* structure act" for "incomes from \* \* \* or otherwise" at the end of the first sentence; substituted "moneys" for "funds" in two places in the second sentence; and made a minor change in punctuation.

#### CHAPTER 8—MISCELLANEOUS POWERS AND DUTIES OF STATE TREASURER—SUSPENSION

**79-801. (183) Repealed.****Repeal**

Section 79-801 (Sec. 444, Pol. C. 1895), relating to posting of warrants for re-

demption, was repealed by Sec. 3, Ch. 152, Laws 1971.

**79-804. (185) Repealed.****Repeal**

Section 79-804 (Sec. 1, Ch. 5, L. 1909), relating to a stenographer for the state

treasurer, was repealed by Sec. 3, Ch. 152, Laws 1971.

**79-806 to 79-808. (187.1 to 187.3) Repealed.****Repeal**

Sections 79-806 to 79-808 (Secs. 1 to 3, Ch. 6, L. 1925), relating to accounting and

the state treasurer's reports, were repealed by Sec. 3, Ch. 152, Laws 1971.

**79-810. (189) Repealed.****Repeal**

Section 79-810 (Sec. 3, Ch. 141, L. 1907),

relating to reports of depositories, was repealed by Sec. 3, Ch. 152, Laws 1971.

#### CHAPTER 10—STATE BUDGET ACT

**Section**

79-1012. Governor chief budget officer.

79-1013. Blanks for preparation of budget estimates—distribution—form—submission of information.

**79-1012. Governor chief budget officer.** The governor shall be the chief budget officer of the state. The state controller shall be ex officio budget director and it shall be his duty to carry out provisions of this chapter.



**History:** En. Sec. 1, Ch. 158, L. 1959; amd. Sec. 1, Ch. 101, L. 1969.

ure of the governor, and whose duty it shall be to carry out the provisions of this chapter."

#### Amendments

The 1969 amendment substituted the second sentence for the following provision: "and shall appoint a director of the budget, who shall hold office at the pleas-

#### Cross-References

Director's position abolished and functions transferred, sec. 82A-202(2).

**79-1013. Blanks for preparation of budget estimates—distribution—form—submission of information.** In the preparation of a state budget the director of the budget shall not later than the first day of July in the year preceding the convening of the legislative assembly, distribute to all state offices and institutions, including the judicial department, the proper blanks necessary for the preparation of budget estimates. These blanks shall be in such form as shall be prescribed by the director of the budget to procure such information as the director of the budget shall, in his discretion, feel is necessary for the preparation of a budget including budget estimates, estimates of revenues, actual revenues received, expenditures made and other information classified and grouped as requested by the director of the budget and covering such period or periods of time as specified by the director of the budget.

(a) Except as provided in this paragraph, it shall be the duty of each department and agency to submit information requested by the director of the budget on or before the first day of August in the year preceding the convening of the legislative assembly. Each unit of the university of Montana, each state custodial institution and the Montana state highway commission shall submit such information on or before the first day of September of such year.

(b). \* \* \* [Same as parent volume.]

**History:** En. Sec. 2, Ch. 158, L. 1959; amd. Sec. 1, Ch. 91, L. 1961; amd. Sec. 1, Ch. 223, L. 1969.

#### Amendments

The 1969 amendment inserted "and the Montana state highway commission" after "each state custodial institution" in subdivision (a).

### CHAPTER 11—PURCHASE OF STATE GENERAL FUND WARRANTS WITH LAND BOARD FUNDS—NOTICE TO BOARD OF BOND SALES

#### 79-1101. (1912) Prior right to purchase general fund warrants, etc.

##### Cross-References

Board of land commissioners' functions transferred, sec. 82A-205(1)(g).

### CHAPTER 12—MONTANA TRUST AND LEGACY FUND—UNIFIED INVESTMENT PLAN

#### Section

79-1202. Moneys to be invested according to unified plan.

#### 79-1202. (5668.20) Moneys to be invested according to unified plan.

1. \* \* \* [Same as parent volume.]

2. The state board of land commissioners is hereby authorized and re-

quired to invest in the long term investment fund the following: Moneys administered by the Montana highway patrolmen's retirement board in excess of twenty-five thousand dollars (\$25,000); moneys administered by the public employees' retirement board; moneys administered by the industrial accident board; all moneys subject to investment as designated by the teachers' retirement board; moneys designated as available by the Montana fish and game commission and all other moneys designated by statute. Moneys in the long term investment fund may be invested as follows:

(a) \* \* \* [Same as parent volume.]

(b) In general obligation bonds of school districts within the state of Montana; in general obligation bonds of the several counties and cities of the state of Montana; in general obligation bonds of the state of Montana; in capitol building bonds of the state of Montana, now issued or which may hereafter be issued; in bonds issued by the federal land banks; in bonds now or hereafter authorized by the legislature to be issued by the state board of examiners; in interest-bearing warrants upon the general fund of the state and in interest-bearing warrants upon the general fund, the poor fund, the road fund, the retirement fund, or upon the bridge fund of the several counties and school districts of the state of Montana; the purchase of all such investments to be subject to the discretion of the board.

(c) In the obligations, and/or stock where stated, of the following agencies of the government of the United States of America, whether or not such obligations are guaranteed by such government;

(1) to (6) \* \* \* [Same as parent volume.]

(7) United States postal service.

(d) In first mortgages on unencumbered real property when such mortgages are guaranteed or insured in the amount of thirty per cent (30%) or more of the loan made in the event of default by the United States government or any agency or corporate agency of the United States government or when such real property is leased by the mortgagor to any person, firm or corporation, as a lessee, which lease payments are guaranteed for the full term of the loan by any agency of the United States government, and in obligations of housing authorities subject to the terms and limitations of section 35-143, and in unencumbered real property, and in first mortgages of unencumbered real property, not exceeding seventy-five per cent (75%) of the value of the property, provided, however, no more than fifty per cent (50%) of the funds in one (1) account shall be invested in such mortgages and real property.

(e) In first mortgage bonds, debentures, notes and other evidences of indebtedness issued, assumed or guaranteed by any solvent and operating corporation existing under the laws of the United States of America or any state thereof which bonds, debentures, notes and other evidences of indebtedness are, at the time of such investment, within the three (3) highest quality grades for the rating of such bonds, debentures, notes and other evidences of indebtedness by any nationally recognized investment rating agency.

(f). \* \* \* [Same as parent volume.]

(g) In interest-bearing deposits in banks located in the state of Montana; provided, however, that the state treasurer, with the consent of the state depository board, shall designate depositories for such interest-bearing deposits and require pledged securities as specified in section 79-301, R. C. M., 1947, that interest on said deposits shall not be less than the prevailing rate of interest being paid on deposits of private funds.

All securities purchased and all cash on hand for each fund shall be kept separate in the long-term investment fund and all interest collected shall be credited to the fund for which the securities were purchased.

3. The state board of land commissioners is hereby authorized and required to invest in the short-term investment fund any surplus cash in the office of the state treasurer determined to be surplus by the state board of land commissioners; any money in the sinking fund, which is not required for the immediate payment of any bond principal or interest, or which cannot be used for payment and redemption of bonds outstanding because of the same not being redeemable under the option provisions contained therein; any Montana highway patrolmen's retirement moneys less than twenty-five thousand dollars (\$25,000) as directed by the Montana highway patrolmen's retirement board and any other moneys designated by statute to be so invested or any moneys in the custody of any officer or officers of the state, or any governing body of any city, county or school district, the investment of which moneys is requested by the officer, or officers or governing body and which moneys are subject to investment. The moneys in the short-term investment fund may be invested as follows:

(a) The surplus cash in the office of the state treasurer may be invested in registered warrants of the state of Montana, in interest-bearing deposits in banks located in the state of Montana that are deposited in accordance with the requirements and procedures that are specified in section 79-301, R. C. M., 1947, that interest on said deposits shall not be less than the prevailing rate of interest being paid on deposits of private funds, and in treasury obligations of the United States government. All warrants purchased shall bear no interest and the interest received from treasury obligations shall be credited to the general fund of the state of Montana.

(b) Any sinking fund and any other moneys may be invested in bonds of the state of Montana, bonds of the United States, in bonds issued by any agency or department of the United States, treasury obligations of the United States, in interest-bearing warrants drawn against the general fund of the state of Montana; and in interest-bearing deposits in banks located in the state of Montana; provided, however, that the state treasurer, with the consent of the state depository board, shall designate depositories for such interest-bearing deposits and require pledged securities as specified in section 79-301, R. C. M., 1947; that interest on said deposits shall not be less than the prevailing rate of interest being paid on deposits of private funds; provided further, however, that none of such moneys in the sinking fund shall be invested in bonds, interest-bearing deposits or securities except such as will be called in and paid



prior to the time such moneys are required for the payment of principal and interest.

All securities purchased and all cash on hand for each account or subfund shall be kept separate in the short term investment fund and all interest collected shall be credited to the account or subfund for which the securities were purchased.

The state board of land commissioners is hereby authorized to employ, for the purpose of securing advice on retention, sale or purchase of securities, an expert on financial matters who has had a minimum of ten (10) years' experience in the investment field. The said board is also authorized to obtain financial and investment counsel and services from qualified persons and sources on a fee or contract basis.

**History:** En. Sec. 2, Ch. 70, L. 1929; amd. Sec. 8, Ch. 176, L. 1953; amd. Sec. 1, Ch. 118, L. 1957; amd. Sec. 1, Ch. 173, L. 1959; amd. Sec. 1, Ch. 67, L. 1963; amd. Sec. 16, Ch. 147, L. 1963; amd. Sec. 1, Ch. 256, L. 1963; amd. Sec. 1, Ch. 78, L. 1967; amd. Sec. 1, Ch. 185, L. 1967; amd. Sec. 1, Ch. 188, L. 1971; amd. Sec. 1, Ch. 205, L. 1971; amd. Sec. 1, Ch. 269, L. 1971.

#### Compiler's Notes

This section was amended three times in 1971, once by Ch. 188, once by Ch. 205, and once by Ch. 269. None of the amendatory acts mentioned nor incorporated the changes made by the others, except that Ch. 269 included the change made in subdivision 3 (a) by Ch. 205. Chapter 205 was approved on March 3, 1971, and Ch. 269 on March 10, 1971. Since the changes made by the three amendatory acts do not otherwise appear to conflict, the compiler has made a composite section embodying the changes made by all three, but using the text of Ch. 269, in so far as there is any possible conflict with Ch. 205, in subdivision 3(a).

#### Amendments

Chapter 78, Laws of 1967, substituted the last sentence of the last paragraph for "and there shall not be paid for such services an amount in excess of one thousand dollars (\$1,000.00) in any one fiscal year."

Chapter 185, Laws of 1967, reduced the insurance requirement in the first clause of paragraph 2(d) from 50% to 30%; inserted "and in unencumbered real property \* \* \* value of the property" in paragraph 2(d); added "and real property" at the end of paragraph 2(d); and deleted "public utility" before "corporation" in paragraph 2(e).

Chapter 188, Laws of 1971, inserted "or when such real property is leased by the mortgagor to any person, firm or corporation, as a lessee, which leased payments are guaranteed for the full term of the

loan by any agency of the United States Government" in subdivision 2(d).

Chapter 205, Laws of 1971, inserted "determined to be surplus by the state board of land commissioners" in the first part of subsection 3; inserted "in interest-bearing deposits in banks located in the state of Montana that are deposited in accordance with the requirements and procedures that are specified in section 79-301, R. C. M. 1947" in the first sentence of subdivision 3(a); and made minor changes in style.

Chapter 269, Laws of 1971, substituted "in bonds now or hereafter authorized by the legislature to be issued by the state board of examiners" in subdivision 2(b) for "in bonds issued by the state board of examiners to construct an unemployment compensation commission office building including the landscaping and paving around said building upon land adjacent to the capitol buildings; in bonds or other securities which may be issued for the construction of a physical education building at the state industrial school, provided that sufficient fees collected under section 80-816 shall be pledged for the retirement of such bonds or other securities"; added item (7) to subdivision 2(c); inserted the paragraph constituting subdivision (g) in subsection 2; inserted in subdivision 3(a) the same language inserted by Ch. 205, Laws of 1971; inserted "that interest on said deposits shall not be less than the prevailing rate of interest being paid on deposits of private funds" in the first sentence of subdivision 3(a); inserted "and in interest-bearing deposits in banks located in the state of Montana" and the first proviso to subdivision 3(b); inserted "interest-bearing deposits" in the second proviso to subdivision 3(b); deleted "at least fifteen (15) days" before "prior to the time such moneys are required" from the second proviso to subdivision 3(b); and made minor changes in phraseology.

#### Repealing Clause

Section 2 of Ch. 188, Laws 1971 repealed

all acts and parts of acts in conflict therewith.

Section 2 of Ch. 205, Laws 1971 read "Sections 79-303 and 79-304, R. C. M. 1947, are repealed."

#### **Effective Date**

Section 2 of Ch. 185, Laws 1967 pro-

vided the act should be in effect from and after its passage and approval. Approved February 27, 1967.

#### **Cross-References**

Board of land commissioners functions transferred, sec. 82A-205(1)(g).

## **CHAPTER 20—BOND VALIDATING ACT**

### **Section**

79-2001. Short title of act.

79-2002. Definitions.

79-2003. Validation of bonds heretofore issued.

79-2004. Act does not apply to pending actions.

**79-2001. Short title of act.** This act may be cited as "The 1971 Bond Validating Act."

**History:** En. Sec. 1, Ch. 208, L. 1971.

#### **Compiler's Notes**

Chapter 208 of Laws 1971 was substituted for Ch. 43, Laws 1969 and assigned section numbers identical with those of the 1969 law. Previous bond validating acts enacted since 1935 were: Ch. 6, Laws 1937; Ch. 164, Laws 1939; Ch. 45, Laws 1941; Ch. 117, Laws 1943; Ch. 196, Laws 1945; Ch. 81, Laws 1947; Ch. 2, Laws 1953; Ch. 5, Laws 1955; Ch. 4, Laws 1957; Ch. 16, Laws 1959; Ch. 19, Laws 1961; Ch. 100, Laws 1963; Ch. 75, Laws 1965; Ch. 96, Laws 1967.

#### **Title of Act**

An act validating, ratifying, approving and confirming bonds and other instruments or obligations, heretofore issued by public bodies of this state, and all proceedings heretofore taken by such public bodies, to authorize and issue such bonds, instruments and other obligations, however described, and providing that this act may be cited as "The 1971 Bond Validating Act"; containing a repealing clause and providing an effective date.

**79-2002. Definitions.** The following terms, wherever used or referred to in this act, shall have the following meanings:

(1) The term "public body" shall include a county, city, town, school district, irrigation district, drainage district, special improvement district, or any other political or governmental subdivision of the state of Montana, and shall also include the state board of education, the state board of examiners, the state water conservation board, the state highway commission, or any other governmental agency of this state.

(2) The term "bonds" shall include bonds, notes, warrants, debentures, certificates of indebtedness, temporary bonds, temporary notes, interim receipts, interim certificates and all instruments or obligations evidencing or representing indebtedness, or evidencing or representing the borrowing of money, or evidencing or representing a charge, lien or encumbrance on specific revenues, income or property of a public body, including all instruments or obligations payable from a special fund.

**History:** En. Sec. 2, Ch. 208, L. 1971.

**79-2003. Validation of bonds heretofore issued.** All bonds heretofore issued by any public body of this state, and all proceedings heretofore taken for the authorization and issuance of such bonds, for the levy, estab-

ishment, pledge and appropriation of taxes, special assessments and other charges and revenues to pay such bonds, and for the sale, exchange, execution and delivery thereof, are hereby validated, ratified, approved and confirmed, notwithstanding any lack of power (other than constitutional) of such public body, or the governing board or commission or officers thereof, to authorize and issue such bonds, or to sell, exchange, execute or deliver the same, and notwithstanding any defects or irregularities (other than constitutional) in such proceedings or in such sale, exchange, execution or delivery, and bonds of such public bodies, whether heretofore issued or hereafter issued under the authority of proceedings heretofore taken, are and shall be binding, legal, valid and enforceable obligations of such political body.

**History:** En. Sec. 3, Ch. 208, L. 1971.

**79-2004. Act does not apply to pending actions.** This act shall not apply to or affect any action or appeal instituted on or before January 1, 1971, in which the validity of any such proceedings or of any such bonds is at issue.

**History:** En. Sec. 4, Ch. 208, L. 1971.

**Repealing Clause**

Section 5 of Ch. 208, Laws 1971 repealed all acts and parts of acts in conflict therewith.

**Effective Date**

Section 6 of Ch. 208, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 4, 1971.

**CHAPTER 22—LONG-RANGE BUILDING PROGRAM BONDS**

**Section**

79-2202. Long-range building program bonds.

79-2203. Sinking fund account.

79-2205. Authorization of bonds.

**79-2202. Long-range building program bonds.** (1) When authorized by the legislative assembly, and within the limits of such authorization and the further limitations in this section, the board may issue and sell bonds of the state of Montana in such manner as it shall deem necessary and proper to provide funds to finance the long-range building program. All bonds issued hereunder shall contain a statement that they are not and shall never become a debt or liability of the state of Montana within the meaning of any constitutional or statutory limitation or provision, and that no ad valorem tax may be levied upon property within the state of Montana to pay principal thereof or interest thereon, but that the bonds and interest are payable solely from the proceeds of special taxes pledged and appropriated to the sinking fund account as provided in this chapter, and shall contain the pledge of the state of Montana to continue to levy and collect said special taxes and to apply the proceeds thereof to the retirement of said bonds and the payment of interest thereon. Bonds may be issued hereunder to provide funds for the payment or redemption of the outstanding War Veterans' Compensation Bonds and World War I Veterans' Compensation Bonds issued pursuant to Initiative No. 54, and the



amendment thereof, chapter 270, Laws of 1963, and the outstanding long-range building program bonds issued under this section.

(2) Each series of such bonds shall be issued by the board upon request of the controller, in such denominations and form, whether payable to bearer or registered as to principal or both principal and interest, with such provisions for conversion or exchange and for the issuance of notes in anticipation of the execution and delivery of definitive bonds, bearing interest at such rate or rates, maturing at such times not exceeding thirty (30) years from date of issue, subject to redemption at such earlier times and prices and upon such notice, and payable at the office of such fiscal agency of the state of Montana, as the board shall determine subject to the limitations contained in this section.

(3) and (4). \* \* \* [Same as parent volume.]

(5) All proceeds of bonds issued hereunder shall be deposited in the clearance fund account, except that any premiums and accrued interest received shall be deposited in the sinking fund account. For the purposes set forth in subdivision (1) hereof, the state treasurer acting by and with the approval of the state board of examiners may set aside such funds as may be necessary to assure the redemption, or payment at maturity, of all of the outstanding War Veterans' Compensation Bonds and World War I Veterans' Compensation Bonds and as may be necessary or required to fulfill the obligations of the state of Montana by virtue thereof. With such funds the state treasurer with the approval of the state board of examiners is hereby authorized to call said bonds for redemption in accordance with the provisions thereof, at any redemption date, to pay said bonds on the maturity dates thereof, to deposit securities in escrow for the purpose of assuring such payments at future dates, and to take such other steps as may be necessary to fulfill all of the obligations of the state of Montana existing under the provisions of said bonds and the laws and resolutions authorizing the same.

(6) The state board of examiners is hereby authorized to employ a fiscal agent to assist in the performance of its duties hereunder.

**History:** En. Sec. 2, Ch. 276, L. 1965; amd. Sec. 2, Ch. 318, L. 1967; amd. Sec. 1, Ch. 146, L. 1969; amd. Sec. 1, Ch. 222, L. 1971.

The 1969 amendment increased the maximum interest rate specified in subsection (2) from five per cent to five and one-half per cent per annum.

The 1971 amendment deleted from subsection (2) the clause limiting interest rates to five and one-half per cent per annum; and made a minor change in phraseology.

#### **Amendments**

The 1967 amendment, in subsection (1), added the last sentence; in subsection (5), added the last two sentences; and added subsection (6).

**79-2203. Sinking fund account.** (1) From and after the pledge and appropriation of any special tax to the sinking fund account, as provided and contemplated in this section, such tax shall continue in force and shall be available and shall be irrevocably pledged and appropriated for the payment of long-range building program bonds, and all moneys received from the collection thereof shall be deposited by the treasurer to the credit of the sinking fund account, so long as any such bonds or the interest thereon remains unpaid.

(2) and (3) \* \* \* [Same as parent volume.]

(4) The state reserves the power, by enactment of the legislative assembly or the people, to levy, impose and assess and to pledge and appropriate to the sinking fund account any tax specially designated therein, except an ad valorem tax on property, or any specified amount or percentage of the collections of such special tax, provided that this power shall not be construed to constitute a pledge of the general credit of the state of Montana. The state also reserves the power to appropriate any funds designated by enactment of the legislative assembly or the people for the redemption and prepayment of any long-range building program bonds, or to authorize the issuance and sale of bonds for the purpose of refunding any such outstanding bonds or interest thereon, upon such terms and conditions as may be provided in said enactments and consistent with covenants and agreements made for the security of the outstanding bonds. Refunding bonds issued in advance of the maturity of the bonds refunded shall be issued only subject to the conditions stated in subsection (3) of section 79-2202, substituting for this purpose the principal and interest requirements of the refunding bonds for those of the bonds refunded. Nothing herein shall prevent the board from issuing and selling refunding bonds, payable from the sinking fund account, to provide funds for payment of principal or interest due on long-range building program bonds, when and if and to the extent that the sinking fund account is insufficient for this purpose.

(5) The state hereby pledges and appropriates, and directs to be credited as received to the sinking fund account, eleven per centum (11%) of all money received from the collection of the income tax and the corporation license tax referred to in section 84-1901, and such additional amount of said taxes, if any, as may at any time be needed to comply with the principal and interest and reserve requirements stated in subsection (2) of this section; provided that no more than eleven per centum (11%) of such tax collections shall be deemed to be pledged for the purpose of subsection (3) of section 79-2202. The pledge and appropriation herein made shall be and remain at all times a first and prior charge upon all money received from the collection of said taxes.

(6) The state pledges and appropriates and directs to be credited to the sinking fund account fifteen per centum (15%) of all money received from the collection of the nine cents (9¢) excise tax on cigarettes which is levied, imposed and assessed by section 84-5606, subdivision (2). The state also pledges and appropriates and directs to be credited as received to the sinking fund account all money received from the collection of each of the excise taxes on cigarettes which are levied, imposed and assessed by section 84-5606, subdivisions (3) and (4), as amended, after the payment and redemption in full of the outstanding bonds for which said taxes have heretofore been pledged and appropriated, or after the necessary funds have been set aside for such payment and redemption as provided in this act. The state also pledges and appropriates and directs to be credited as received to the sinking fund account all money received from the collection of the taxes on other tobacco products which are or may hereafter be levied, imposed and assessed by law for that purpose

including the tax levied, imposed and assessed by section 84-6802, R. C. M. 1947, enacted by section 2, chapter 12, Extraordinary Session Laws of 1969 [84-6802]. Nothing herein shall impair or otherwise affect the provisions and covenants contained in the resolutions authorizing the War Veterans' Compensation Bonds, the World War I Veterans' Compensation Bonds or the presently outstanding long-range program bonds. Subject to the provisions of the preceding sentence, the pledge and appropriation herein made shall be and remain at all times a first and prior charge upon all money received from the collection of all taxes referred to in this subdivision (6).

**History:** En. Sec. 3, Ch. 276, L. 1965; amd. Sec. 3, Ch. 318, L. 1967; amd. Sec. 2, Ch. 222, L. 1971.

#### Amendments

The 1967 amendment, in subsection (5), increased appropriations to the sinking fund from 5 per centum to 11 per centum; in subsection (6), deleted "After approval through initiative or referendum by a majority of the electors voting at an election prior to January 1, 1967," at the beginning of the subsection; deleted "upon such approval also" before "pledges"; substituted "said taxes have"

for "any such tax has" before "heretofore"; added "or after the necessary funds \* \* \* in this act" at the end of the first sentence, now the second sentence; and added the last three sentences.

The 1971 amendment inserted a new first sentence in subsection (6); deleted "and other tobacco products" following "cigarettes" in the second sentence of subsection (6); added at the end of the third sentence of subsection (6) the clause referring to the tax imposed by section 84-6802; and made minor changes in phraseology.

**79-2205. Authorization of bonds.** The board is authorized to issue and sell long-range building program bonds in an amount not exceeding five million, five hundred thousand dollars (\$5,500,000), over and above the amount of the long-range building program bonds outstanding January 1, 1971, upon the conditions and in the manner stated in this chapter. The board is also authorized to issue and sell long-range building program bonds in such amount as may be required to provide funds for the payment or redemption of outstanding bonds as contemplated in section 79-2202, subdivisions 1 and 5.

**History:** En. Sec. 5, Ch. 276, L. 1965; amd. Sec. 4, Ch. 318, L. 1967; amd. Sec. 2, Ch. 146, L. 1969; amd. Sec. 3, Ch. 222, L. 1971.

#### Amendments

The 1967 amendment inserted "over and above the amount of the long-range building program bonds outstanding January 1, 1967," before "upon the conditions"; and added the last sentence.

The 1969 amendment substituted "eighteen million dollars (\$18,000,000)" for "thirteen million five hundred thousand dollars (\$13,500,000)" and substituted "previously authorized" for "outstanding January 1, 1967" before "upon the conditions" in the first sentence.

The 1971 amendment substituted "five million, five hundred thousand dollars (\$5,500,000) over and above the amount of the long-range building program bonds outstanding January 1, 1971" in the first sentence for "eighteen million dollars (\$18,000,000), over and above the amount of the long-range building program bonds previously authorized."

#### Effective Date

Section 3 of Ch. 146, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 27, 1969.



## CHAPTER 23—LEGISLATIVE AUDIT ACT

## Section

- 79-2301. Title and purpose of act.
- 79-2302. Definitions.
- 79-2303. Legislative audit committee—appointment and term of members—officers.
- 79-2304. Meetings.
- 79-2305. Appointment and qualifications of legislative auditor.
- 79-2306. Appointment of employees.
- 79-2307. Term and removal of legislative auditor.
- 79-2308. Duties of legislative auditor.
- 79-2309. Audit standards and objectives.
- 79-2310. Recommendations of legislative auditor.
- 79-2311. Legislative auditor to assist legislative assembly during sessions.
- 79-2312. Information from state agencies.

**79-2301. Title and purpose of act.** This act may be cited as “The Legislative Audit Act.” Because the legislative assembly is responsible for authorizing the expenditure of public moneys, designating the sources from which moneys may be collected, shaping the administration to perform the work of state government, and is held finally accountable for fiscal policy, the legislative assembly should also be responsible for the audit of fiscal accounts and records so that it may be assured that its directives have been faithfully carried out. It is the intent of this act that each agency of state government be audited for the purpose of furnishing the legislative assembly with factual information vital to the discharge of its legislative duties.

**History:** En. Sec. 1, Ch. 249, L. 1967.

**Title of Act**

“The Legislative Audit Act” creating a legislative audit committee and the office of legislative auditor and providing for the audit of state agencies by the

legislative auditor; amending sections 82-1002, 82-1005, 82-1007, 82-1009, 82-110, 71-206, 4-347, 4-230, and 5-910, R. C. M. 1947; repealing sections 82-1014, 82-1015, 82-1016, 84-4403, 84-4404, and 84-4405, R. C. M. 1947, and providing an effective date.

**79-2302. Definitions.** In this act

(1) “State agency” means all offices, departments, boards, commissions, institutions, universities, colleges, and any other person or any other administrative unit of state government that spends or encumbers public moneys by virtue of an appropriation from the legislative assembly, or that handles money on behalf of the state, or that holds any trust or agency moneys from any source.

(2) “Committee” means the legislative audit committee.

**History:** En. Sec. 2, Ch. 249, L. 1967.

**79-2303. Legislative audit committee—appointment and term of members—officers.** The legislative audit committee consists of four (4) members of the Senate and four (4) members of the House of Representatives appointed before the sixtieth legislative day in the same manner as standing committees of the respective houses are appointed. A vacancy on the committee occurring when the legislative assembly is not in session shall be filled by the selection of a member of the legislative assembly by the remaining members of the committee. No more than two (2) of the appointees of each house shall be members of the same political party. Membership on the committee shall terminate with the termination of each

member's term of office, or on December 31 of the year following the year in which the appointment was made, whichever event first occurs. The committee shall elect one of its members as chairman and such other officers as it deems necessary.

History: En. Sec. 3, Ch. 249, L. 1967.

**79-2304. Meetings.** The committee shall meet once each quarter to advise and consult with the legislative auditor. Committee members shall be reimbursed from the appropriation to the office of the legislative auditor for their actual and necessary expenses incurred as a result of such interim meetings.

History: En. Sec. 4, Ch. 249, L. 1967.

**79-2305. Appointment and qualifications of legislative auditor.** The committee shall appoint the legislative auditor and set his salary. The legislative auditor shall hold a degree from an accredited college or university with a major in accounting or an allied field and shall have at least two (2) years experience in the field of governmental accounting and auditing.

History: En. Sec. 5, Ch. 249, L. 1967.

**79-2306. Appointment of employees.** The legislative auditor may appoint whatever employees are necessary to carry out the provisions of this act, within the limitations of legislative appropriations.

History: En. Sec. 6, Ch. 249, L. 1967.

**79-2307. Term and removal of legislative auditor.** The legislative auditor is solely responsible to the legislative assembly. He shall hold office for a term of two (2) years beginning with July 1 of each odd-numbered year. The committee may remove him for misfeasance, malfeasance or nonfeasance in office at any time after notice and hearing.

History: En. Sec. 7, Ch. 249, L. 1967.

**79-2308. Duties of legislative auditor.** The legislative auditor shall

(1) Audit the financial affairs and transactions of every state agency at least once each biennium.

(2) Make a full, complete and written report of each audit. A copy of each report shall be furnished to the state controller, to the state agency which is audited, to each member of the committee, and to the legislative council.

(3) Report immediately in writing to the attorney general any apparent violation of penal statutes disclosed by the audit of a state agency, and furnish the attorney general all information in his possession relative to the violation.

(4) Report immediately in writing to the governor any instances of misfeasance, malfeasance or nonfeasance by a state officer or employee disclosed by the audit of a state agency.

(5) Report immediately to the surety upon the bond of any official or employee when an audit discloses a shortage in the accounts of the

official or employee. The failure to notify the surety does not release the surety from any obligation under the bond.

(6) Report to the legislative assembly during the first week of each regular session. Each biennial report shall contain, among other things, copies of, or summaries of audit reports on state agencies and any recommendations relating to such reports.

**History:** En. Sec. 8, Ch. 249, L. 1967.

**79-2309. Audit standards and objectives.** The objectives of audits of state agencies conducted by the legislative auditor are to determine whether

(1) The agency is carrying out only those activities or programs authorized by the legislative assembly and is conducting them efficiently and effectively.

(2) Expenditures are made only in furtherance of authorized activities and in accordance with the requirements of applicable laws and regulations.

(3) The agency collects and accounts properly for all revenues and receipts arising from its activities.

(4) The assets of the agency or in its custody are adequately safeguarded and controlled and utilized in an efficient manner.

(5) Reports and financial statements by the agency to the governor, the legislative assembly, and central control agencies disclose fully the nature and scope of the activities conducted, and provide a proper basis for evaluating the agency's operations.

**History:** En. Sec. 9, Ch. 249, L. 1967.

**79-2310. Recommendations of legislative auditor.** The reports of the legislative auditor may include comments, recommendations and suggestions, but he shall have no power to enforce them nor shall he otherwise influence or direct executive or legislative action.

**History:** En. Sec. 10, Ch. 249, L. 1967.

**79-2311. Legislative auditor to assist legislative assembly during sessions.** During sessions of the legislative assembly, the legislative auditor and his staff, when requested, shall assist the legislative assembly, its committees, and its members by gathering and analyzing information relating to the fiscal affairs of state government.

**History:** En. Sec. 11, Ch. 249, L. 1967.

**79-2312. Information from state agencies.** All state agencies shall aid and assist the legislative auditor in the auditing of books, accounts and records. The legislative auditor may examine at any time the books, accounts and records, confidential or otherwise, of a state agency; however, this shall not be construed as authorizing the publication of information which the law prohibits publishing. The head of each state agency shall immediately notify the legislative auditor in writing upon the discovery of any larceny, or embezzlement, actual or suspected involving state moneys or property under his control or for which he is responsible.



**History:** En. Sec. 12, Ch. 249, L. 1967;  
amd. Sec. 1, Ch. 270, L. 1971.

**Amendments**

The 1971 amendment added the third sentence.

**Repealing Clause**

Section 2 of Ch. 270, Laws 1971 read  
"Section 79-2313, R. C. M., 1947, is hereby  
repealed."

**79-2313. Repealed.**

**Repeal**

Section 79-2313 (Sec. 13, Ch. 249, L.  
1967; Sec. 1, Ch. 4, L. 1969), relating to

audit charges against earmarked money,  
was repealed by Sec. 2, Ch. 270, Laws 1971.

**CHAPTER 24—STATE BOARD OF REVIEW—REIMBURSEMENT OF  
GENERAL FUND FOR COSTS OF CENTRAL SERVICES**

**Section**

- 79-2401. State board of review.
- 79-2402. Members of board.
- 79-2403. Per diem expenses for member not a state officer.
- 79-2404. State controller as chairman—substitutes.
- 79-2405. Records—dissent.
- 79-2406. Seal—authentication of records.
- 79-2407. Quorum—vacancy.
- 79-2408. Secretary—cost of operation.
- 79-2409. "Administrative cost" defined—state agencies.
- 79-2410. Determination of administrative cost—charge against agency's fund.
- 79-2411. Factors in determining share of administrative cost—tax proceeds—highway purposes—constitutional restriction.
- 79-2412. Certification—statement—administrative cost due—deferment—transfer of funds.
- 79-2413. Funds unavailable—unable to pay—written request for deferment—requirements.
- 79-2414. Certification—advance payment—deferment—funds unavailable—transfer.
- 79-2415. Deferred advance payment—written request—advance applied against share of administrative cost—excess amount refunded.

**79-2401. State board of review.** As used in this act, "board" means the state board of review.

**History:** En. Sec. 1, Ch. 11, L. 1969.

**Title of Act**

An act to provide for reimbursement to the state general fund for the costs of central services financed from the general fund that are provided to agencies which operate with nongeneral fund moneys and

to provide a board of review to determine that the amount of these charges is fair and equitable.

**Cross-References**

Board abolished and functions transferred, sec. 82A-202(3).

**79-2402. Members of board.** There is in the executive branch of state government a state board of review. The board consists of the state controller, the state auditor, both acting ex officio, and a third member who shall be appointed by and serve at the pleasure of the governor. The third member may be a state officer who shall act ex officio.

**History:** En. Sec. 2, Ch. 11, L. 1969.

**79-2403. Per diem expenses for member not a state officer.** If the third member is not a state officer acting ex officio, he shall receive twenty-five dollars (\$25) for every day of actual attendance at meetings of the

board, together with his necessary traveling expenses in attending such meetings.

**History:** En. Sec. 3, Ch. 11, L. 1969.

**79-2404. State controller as chairman—substitutes.** The state controller is chairman of the board. A member of the board may appoint a representative to act for him in carrying out the provisions of this act.

**History:** En. Sec. 4, Ch. 11, L. 1969.

**79-2405. Records—dissent.** The board shall keep a record of all its proceedings, and any member may cause his dissent to the action of the majority upon any matter to be entered upon the record.

**History:** En. Sec. 5, Ch. 11, L. 1969.

**79-2406. Seal—authentication of records.** The board shall have a seal, bearing the following inscription: "State Board of Review." The seal shall be fixed to all writs and authentications of copies of records and to other instruments as the board directs.

**History:** En. Sec. 6, Ch. 11, L. 1969.

**79-2407. Quorum—vacancy.** A majority of the board constitutes a quorum for the transaction of any business, for the performance of any duty, or for the exercise of any power of the board. The act of a majority of the board when in session as a board is the act of the board. A vacancy in the board does not impair the right of the remaining members to exercise all the powers of the board.

**History:** En. Sec. 7, Ch. 11, L. 1969.

**79-2408. Secretary—cost of operation.** The state controller shall provide the board a secretary and all other assistance necessary for the board to fulfill its duties. All costs of operating the board shall be paid from moneys appropriated to the state controller.

**History:** En. Sec. 8, Ch. 11, L. 1969.

**79-2409. "Administrative cost" defined—state agencies.** As used in this act, "administrative costs" means the amounts expended by those state agencies which costs are attributable to the operations of all state agencies and a proration of any cost to, or expense of, the state for services of facilities provided for those state agencies which costs are attributable to the operations of all state agencies, for supervision or administration of the state government, or for services to the various state agencies.

**History:** En. Sec. 9, Ch. 11, L. 1969.

**79-2410. Determination of administrative cost—charge against agency's fund.** The state board of review shall determine, and may at any time redetermine, which funds shall be charged a share of administrative costs as to the function supported by any such fund and the amount which shall be charged against any fund as its fair share of administrative costs. These costs shall be a charge against any fund designated by the board.

**History:** En. Sec. 10, Ch. 11, L. 1969.

**79-2411. Factors in determining share of administrative cost—tax proceeds—highway purposes—constitutional restriction.** In determining or redetermining the fair share, the board may consider such factors of cost distribution and cost estimation as it deems necessary. However, that as to the proceeds of those taxes, the use of which is restricted by section 1b, of article XII, of the Montana constitution, the board shall assess only those administrative costs ascertained as being necessarily incurred in connection with highway purposes as set forth in that article.

**History:** En. Sec. 11, Ch. 11, L. 1969.

**79-2412. Certification—statement—administrative cost due—deferment—transfer of funds.** The board shall certify annually to the state controller the amount determined to be the fair share of administrative costs due and payable from each state agency and shall certify forthwith to the controller any amount redetermined to be the fair share of administrative costs due and payable from any state agency. The controller shall forthwith transmit to each state agency, from which administrative costs have been determined or redetermined to be due, a statement in writing setting forth the amount of the administrative costs due from the state agency, and stating that, unless a written request to defer payment is filed by the state agency with the state controller within thirty (30) days after the mailing of the statement by the controller to the state agency, the controller will direct the state treasurer to transfer the amount of the administrative costs from the special fund or funds chargeable therewith to the state general fund. The controller shall specify on the statement the special fund appropriations to be charged at the time transfers are made covering the administrative costs.

**History:** En. Sec. 12, Ch. 11, L. 1969.

**79-2413. Funds unavailable—unable to pay—written request for deferment—requirements.** If, upon receipt of the statement provided in section 12 [79-2412] of this act, the state agency does not have funds available by law for the payment of the administrative costs, or if any transfer might, if effected, result in loss to the state or to any special fund affected, of any federal funds, or would be in violation of the constitution or any law of the United States, or if it has any other reason why the payment of the costs should not be made at the time specified on the statement, the state agency shall, prior to the expiration of the thirty (30) day period referred to in the statement, file with the controller, in duplicate, a written request to defer payment of the administrative costs. The request shall set forth the reasons why the payment should be deferred. Upon receipt of a request filed because of lack of availability of funds or because of any reason other than lack of availability of funds, the controller shall forthwith transmit one (1) copy of the request to the board; and shall defer action to effect the transfer of funds until the transfer has been approved by the board.

**History:** En. Sec. 13, Ch. 11, L. 1969.

**79-2414. Certification—advance payment—deferment—funds unavailable—transfer.** The board may certify at any time during the year to the



state controller the amount as it determines, based upon experience of the preceding year, to be a reasonable advance for administrative costs to be made from the appropriation of each state agency supported from a fund, designated in accordance with section 10 [79-2410] of this act. The controller shall forthwith transmit to each state agency a statement in writing setting forth the amount of the advance, and stating that unless a written request to defer payment because of lack of availability of funds is filed by the state agency with the controller within thirty (30) days after the mailing of the statement by the controller to the state agency, the controller will transfer the amount of the advance from the special fund, or funds concerned, to the state general fund. The controller shall specify on the statement that special fund appropriation to be charged.

**History:** En. Sec. 14, Ch. 11, L. 1969.

**79-2415. Deferred advance payment—written request—advance applied against share of administrative cost—excess amount refunded.** If, upon receipt of the statement provided in section 14 [79-2414] of this act, the state agency does not have funds available by law for the payment of the advance, the state agency shall, prior to the expiration of the thirty (30) day period referred to in the statement, file with the state controller, in duplicate, a written request to defer payment of the advance. Upon receipt of a request, the controller shall forthwith transmit one (1) copy of the request to the board and shall defer action to effect the transfer of funds covering the advance referred to in the request until the transfer has been approved by the board. Any advance shall be applied against the state agency's fair share of administrative costs determined or redetermined as provided in section 12 [79-2412] and section 13 [79-2413] of this act. If the amount advanced exceeds the state agency's fair share of administrative costs, the controller shall transfer from the state general fund to the special fund appropriation the excess amount advanced.

**History:** En. Sec. 15, Ch. 11, L. 1969.

## CHAPTER 25—EMERGENCY AND DISASTER FUND

### Section

79-2501. Governor may authorize expenditure in case of emergency or disaster.

79-2502. Maximum biennial expenditure.

79-2503. Implementation and administration.

**79-2501. Governor may authorize expenditure in case of emergency or disaster.** The governor may authorize the incurring of liabilities and expenses to be paid as other claims against the state from the general fund, in the amount necessary, when an emergency or disaster justifies the expenditure and is declared by the governor, to meet contingencies and emergencies arising from hostile attacks, riots or insurrections, epidemics of disease, plagues of insects, fires, floods or other acts of God resulting in damage or disaster to the works, building or property of the state or any political subdivision thereof, or which menace the health, welfare, safety, lives or property of any considerable number of persons in any

county or community of the state, upon demonstration by the political jurisdiction that such political jurisdiction has exhausted all available emergency levies, that the emergency is beyond the financial capability of the political jurisdiction to respond, and for which no appropriation is available in sufficient amount to meet the emergency or disaster, or that federal funds available for such emergency or disaster require either matching state funds or specific expenditures prior to eligibility for assistance under federal laws.

**History:** En. Sec. 1, Ch. 409, L. 1971.

**Title of Act**

An act to provide an emergency and disaster fund for the governor to be implemented by the department of administra-

tion, authorizing the governor to expend not to exceed seven hundred fifty thousand dollars (\$750,000) per biennium from the general fund, and an immediate effective date.

**79-2502. Maximum biennial expenditure.** Whenever an emergency or disaster is declared by the governor, he is authorized to expend from the general fund not to exceed seven hundred fifty thousand dollars (\$750,000), in any one (1) biennium.

**History:** En. Sec. 2, Ch. 409, L. 1971.

**79-2503. Implementation and administration.** The governor shall be charged with the implementation of the program, and the administration and development of rules and regulations for implementation of this act will be promulgated by the department of administration.

**History:** En. Sec. 3, Ch. 409, L. 1971.

**Effective Date**

Section 4 of Ch. 409, Laws 1971 read

"In order to preserve the public peace, health, welfare and safety, this act shall become effective upon its passage and approval." Approved March 18, 1971.

## CHAPTER 26—INTEREST ON BONDS AND SPECIAL ASSESSMENTS OF POLITICAL SUBDIVISIONS

### Section

79-2601. Definitions.

79-2602. Rate of interest on bonds to be determined by governing bodies—limitations and exceptions.

79-2603. Rate of interest on special assessments to be determined by governing bodies—limitations.

**79-2601. Definitions.** The following terms as used in this act have the following meanings: (1) "Bonds" include bonds, notes, warrants, debentures, certificates of indebtedness, temporary bonds, temporary notes, interim receipts, interim certificates and all instruments or obligations evidencing or representing indebtedness, or evidencing or representing the borrowing of money, or evidencing or representing a charge, lien or encumbrance on specific revenues, special assessments, income or property of a political subdivision, including all instruments or obligations payable from a special fund.

(2) "Political subdivision" includes a county, city, town, school district, irrigation district, drainage district, special improvement district, or any other governmental subdivision of the state of Montana, but shall not include the state of Montana, the state board of examiners, the state

water conservation board, the state highway commission or any other board, agency, or commission of the state of Montana.

(3) "Governing body" means the board, council, commission or other body charged with the general control of the issuance of bonds of a political subdivision.

<b>History:</b> En. Sec. 1, Ch. 234, L. 1971.	75-7115, 75-7116, 75-7119, 75-7121, 11-2315, 16-2032, 11-982, 11-1307, 11-2218, 11-2214.2, 11-2226, 11-2227, 11-2231, 11-2249, 11-2277, 11-3717, 11-3910, 16-1620, 16-2002, 16-2046, 16-2604, 16-4517, 32-3121, 32-3123, 32-3502, 32-3805, 81-1003, 89-1701, 89-1705, 89-1801, 89-2348, 89-2501, 35-115, 47-124, 89-2502 and 89-3426, R. C. M. 1947.
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**Title of Act**

An act relating to the maximum rate of interest on bonds issued and special assessments levied and other evidence of indebtedness by political subdivisions and providing an effective date, and amending sections 11-2304, 11-2404, 16-2011, 75-7107,

**79-2602. Rate of interest on bonds to be determined by governing bodies—limitations and exceptions.** Bonds of a political subdivision shall bear interest at such rate or rates as its governing body shall determine, except that no such rate shall exceed seven per cent (7%) except revenue bonds issued under the terms of sections 11-2401 through 11-2414, sections 11-2217 through 11-2221, and sections 11-4101 through 11-4110, R. C. M. 1947, which rate shall not exceed nine per cent (9%).

**History:** En. Sec. 2, Ch. 234, L. 1971.

**79-2603. Rate of interest on special assessments to be determined by governing bodies—limitations.** All special assessments levied by a political subdivision shall bear interest at such rate or rates as its governing body shall determine, except that no such rate shall exceed the greater of seven per cent (7%) per annum or, in the event that the special assessments are appropriated for the payment of principal and interest on bonds issued by the political subdivision, the rate of interest on said bonds.

**History:** En. Sec. 3, Ch. 234, L. 1971.





## TITLE 80—STATE INSTITUTIONS

### Chapter

1. Montana state school for the deaf and blind, 80-105, 80-107.
14. State department of institutions, 80-1403 to 80-1405, 80-1410 to 80-1418.
16. Payments for the care of residents of institutions, 80-1601, 80-1603.
17. Galen state hospital, 80-1701 to 80-1704.
19. State prison, 80-1903, 80-1905, 80-1908 to 80-1911.
22. State vocational school for girls and state industrial school, 80-2202 to 80-2206, 80-2209 to 80-2212.
23. Boulder river school and hospital, 80-2303 to 80-2312.
24. Division of mental hygiene—state hospital and mental health centers, 80-2401, 80-2401.1, 80-2402 to 80-2412.
26. Division of mental retardation, 80-2601 to 80-2610.

### CHAPTER 1—MONTANA STATE SCHOOL FOR THE DEAF AND BLIND

#### Section

- 80-105. Eligibility of children for admittance.  
80-107. Duration of attendance at school.

**80-105. Eligibility of children for admittance.** On proper application being made therefor, deaf and blind children who are not more than eighteen (18) years of age residing within the state of Montana, and nonresident children, who are not more than eighteen (18) years of age, who are not mentally deficient, dangerously diseased in body, or of confirmed immorality, or incapacitated for useful instruction by reason of physical disability, may be admitted to such school.

**History:** En. Sec. 4, Ch. 182, L. 1943; reached the age of five (5) and" after  
amd. Sec. 1, Ch. 282, L. 1967. "blind children"; and substituted "who  
are not more than eighteen (18) years of  
age" for "between such ages" after "non-  
resident children."

#### Amendments

The 1967 amendment deleted "who have

**80-107. Duration of attendance at school.** Every child admitted to such school shall be entitled to attend such school until reaching the age of twenty-one (21) years unless the board of education and superintendent determine that attendance at the school will not benefit the child; provided, that nothing in this section shall be construed so as to prevent the suspension or expulsion of any child at any time for insubordination or other cause deemed good and sufficient by the board of education and superintendent.

**History:** En. Sec. 6, Ch. 182, L. 1943; year period. Any child who has attended  
amd. Sec. 2, Ch. 282, L. 1967. the school for a period of ten (10) years,  
but has not yet reached the age of twenty-  
one (21) years, with the consent and  
approval of the superintendent of the  
school, may petition the state board of  
education to remain in such school for an  
additional period of two (2) years, or until  
arriving at the age of twenty-one (21)  
years if such child will arrive at such  
age before the expiration of such addi-  
tional two (2) year period. The board

#### Amendments

The 1967 amendment deleted "for a period of ten (10) years, or" after "such school" and substituted "unless the board of education and superintendent determine that attendance at the school will not benefit the child" after "twenty-one (21) years" for "if such age be reached before the expiration of such ten (10)

shall consider the petition upon the schoolastic record and the record as to obedience and morality of such child while in

such school and if it finds it proper to do so may grant the same."

#### CHAPTER 14—STATE DEPARTMENT OF INSTITUTIONS

##### Section

- 80-1403. Institutions in department.
- 80-1404. Director of department—appointment, powers and duties.
- 80-1405. Powers and duties of board.
- 80-1410. Establishment of juvenile correctional facilities.
- 80-1411. Control and management of juvenile correctional centers—rules—special programs.
- 80-1412. Youth forest camp—work program.
- 80-1413. Participation by governing boards in research programs.
- 80-1414. Aftercare agreement to be signed by child before release from juvenile facility to custody of aftercare division.
- 80-1415. Control over minor so released vested in department of institutions.
- 80-1416. Detention of child who violates aftercare agreement—delivery on request to aftercare division.
- 80-1417. Removal of patients from state custodial institutions without permission of staff a misdemeanor—penalty.
- 80-1418. Distribution of alcoholic beverages and drugs to patients at state custodial institutions a misdemeanor—penalty.

#### 80-1401. Purpose of department.

##### Cross-References

Department abolished and functions transferred, sec. 82A-802.

**80-1403. Institutions in department.** The following institutions are in the state department of institutions:

- (1) Galen state hospital
- (2) Montana veterans' home
- (3) State prison
- (4) Montana children's center
- (5) Mountain View school
- (6) Pine Hills school
- (7) Boulder river school and hospital
- (8) Warm Springs state hospital
- (9) Montana center for the aged
- (10) Swan river youth forest camp
- (11) Eastmont training center
- (12) Such other institutions or departments established or to be established in the future having the function or purpose of providing care and services for juvenile delinquents including but not limited to youth forest camps and juvenile reception and evaluation centers.

No state institution may be moved, discontinued or abandoned without prior consent of the legislative assembly.

**History:** En. Sec. 3, Ch. 199, L. 1965; amd. Sec. 1, Ch. 320, L. 1967; amd. Sec. 1, Ch. 280, L. 1969.

of the institutions listed in clauses (1), (5), (6), (7) and (8); and added clauses (10) and (11).

The 1969 amendment inserted new clause (11) and redesignated former clause (11) as clause (12).

##### Amendments

The 1967 amendment changed the names



**Effective Date**

Section 2 of Ch. 280, Laws 1969 provided the act should be in effect from

and after its passage and approval. Approved March 10, 1969.

**80-1404. Director of department—appointment, powers and duties.** The board shall appoint the director, who is the chief executive and administrative officer of the department. The director shall be a person qualified by experience, training and professional competence in institutional rehabilitation and treatment management. The function of the director, in addition to other duties assigned to him by law, is to execute the policies established by the board. The director shall appoint employees for the central office of the department.

**History:** En. Sec. 4, Ch. 199, L. 1965; amd. Sec. 2, Ch. 320, L. 1967.

at the end of the section, which read "The board shall appoint and after hearing held discharge the warden or superintendent of institutions."

**Amendments**

The 1967 amendment deleted a sentence

**80-1405. Powers and duties of board.** The board shall:

- (1). \* \* \* [Same as parent volume.]
- (2) Report as provided in section 2 [82-4002] of this act.
- (3) to (7). \* \* \* [Same as parent volume.]

(8) To choose, appoint and discharge the warden or superintendent of each of the institutions or facilities in the department and, unless the legislative assembly has specified the salary of the warden or superintendent of the institution or facility in the appropriation to the department of institutions, fix their compensation after approval by the board of examiners. Before approving any salary increase, the board of examiners shall review the salaries of comparable positions in Montana state government, other states, and private industry.

**History:** En. Sec. 5, Ch. 199, L. 1965; amd. Sec. 3, Ch. 320, L. 1967; amd. Sec. 33, Ch. 93, L. 1969.

porting requirements of section 82-4002 for former provision requiring annual reports to governor and biennial reports to legislature.

**Amendments**

The 1967 amendment added subparagraph (8).

The 1969 amendment substituted the re-

**Cross-References**

Board functions transferred, sec. 82A-803.

**80-1406. Warden and superintendents of institutions, etc.**

**Cross-References**

Advisory councils to state prison and veterans' home abolished, sec. 82A-807(4).

Council of superintendents abolished, sec. 82A-807(2).

**Discretionary Authority of Warden of State Prison.**

Actions of warden of state prison in

denying inmate access to money deposited in his spending account would not be interfered with in light of wide discretionary powers granted warden and in absence of clear showing that warden abused discretion. *Petition of Spurlock*, 151 M 380, 443 P 2d 5.

**80-1407. Board of institutions—appointment and qualifications.**

**Cross-References**

Board continued as advisory and quasi-judicial board, sec. 82A-806.

Terms of office of board members after reorganization, sec. 82A-112(2)(b).

**80-1410. Establishment of juvenile correctional facilities.** The state department of institutions within the annual or biannual budgetary appropriation therefor may establish, maintain and operate facilities as may be needed properly to diagnose, care for, train, educate, and rehabilitate children in need of these services, and ten (10) years of age or older and under twenty-one (21), including but not limited to, the Mountain View school, the Pine Hills school and the youth forest camp.

**History:** En. Sec. 8, Ch. 320, L. 1967.

**Title of Act**

An act relating to the powers and duties of the board of institutions and to certain institutions under its management and control; providing the board's power to fix salaries of superintendents of institutions with the approval of the board of examiners if the salaries of superintendents or wardens are not specified by the legislative assembly in the appropriation to the department of institutions; changing the name of certain institutions; generally revising and amending the laws relating to juvenile correctional institu-

tions; providing for the control and management of juvenile correctional facilities including juvenile correctional facilities hereafter authorized by the legislature; providing for transferring of prisoners sent to the state prison who are under the age of twenty-one (21) to juvenile correctional facilities; amending sections 80-1403, 80-1404, 80-1405, 80-1601, 80-1701, 80-1702, 80-1703, 80-2202, 80-2203, 80-2204, 80-2205, 80-2206, 80-2209, 80-2210, 80-2211, 80-2212, 80-2301, 80-2302, 80-2303, 80-2304, 80-2305, 80-2306, 80-2307, 80-2308, 80-2309, 80-2401, 80-2402, 80-2404, repealing 80-2201, 80-2208, R. C. M. 1947.

**80-1411. Control and management of juvenile correctional centers—rules—special programs.** All of the facilities provided for in section 8 [80-1410] of this act or which may hereafter be established by the department pursuant to the authority granted by section 8 [80-1410] of this act shall exercise their functions under the supervision, direction, control and general management of the department. Except where otherwise provided by law, the department by rule and regulations shall establish standards of care, policies of admission, transfers, discharge and aftercare supervision and from time to time it shall order such changes in the policies, conduct or management of the facilities as seems desirable in order to provide adequate care for children and adequate service to the courts. The department shall develop special programs within each facility which are adaptable to the particular needs of its operation.

**History:** En. Sec. 9, Ch. 320, L. 1967.

**80-1412. Youth forest camp—work program.** In the case of a youth forest camp, a work program shall be provided by the Montana state forester, and shall be carried out with co-operation between the state forester and the camp superintendent.

**History:** En. Sec. 10, Ch. 320, L. 1967.

**80-1413. Participation by governing boards in research programs.** The duly constituted and governing board of any penal, corrective, or custodial institution of the state of Montana is hereby enabled and authorized to participate in and co-operate with programs of research and development being conducted and carried on by any units of the Montana university system, by any of the other educational institutions of the state of Montana or by any foundation or agency thereof, in the fields of science, health, education and natural resources. Such programs may include the

voluntary participation of the inmates of the institution in testing and experimental work conducted as a part thereof. Any funds received from the authorized programs may be shared with the participating inmates or otherwise held and used for the welfare and rehabilitation thereof, and shall not become a part of the regular budgeted operation of the institution.

**History:** En. Sec. 1, Ch. 98, L. 1967.

**Title of Act**

An act authorizing voluntary participation in programs of research and development in the fields of science, health, edu-

cation and natural resources by the governing boards of state penal, corrective or custodial institutions, and by the inmates thereof for use in welfare and rehabilitation work within said institutions.

**80-1414. Aftercare agreement to be signed by child before release from juvenile facility to custody of aftercare division.** A child released by the department of institutions from one of the state juvenile facilities to the supervision, custody and control of the aftercare division of the department of institutions shall, before being so released, sign an aftercare agreement containing the terms and conditions under which the child is so released.

**History:** En. Sec. 1, Ch. 158, L. 1969.

**Title of Act**

An act providing for the apprehension and detention of a child released from the custody of one of the state juvenile

facilities to the supervision, custody and control of the aftercare division of the department of institutions, who has violated the terms of his or her aftercare agreement.

**80-1415. Control over minor so released vested in department of institutions.** The department of institutions has control over a child so released until he attains the age of twenty-one (21) years, subject, however, to the general jurisdiction of the various courts of Montana for acts committed by such child while under the control of the department.

**History:** En. Sec. 2, Ch. 158, L. 1969.

**80-1416. Detention of child who violates aftercare agreement — delivery on request to aftercare division.** A child who violates the terms and conditions of his or her aftercare agreement may be detained, day or night, by the department of institutions or by any law officer of the state of Montana or any county or city of the state of Montana, upon certificates in writing to such officer by the director of the aftercare division of the department of institutions or any aftercare counselor of the department of institutions to the effect that such child has violated the terms and conditions of his or her aftercare agreement. Upon detention by a law officer of the state of Montana as hereinbefore provided, such child shall on request be delivered to the custody of the aftercare division of the department of institutions who may

(1) return such child to one of the juvenile facilities of the state of Montana, or

(2) continue such child under the supervision of the aftercare division.



**History:** En. Sec. 3, Ch. 158, L. 1969.

vided the act should be in effect from and after its passage and approval. Approved February 28, 1969.

**Effective Date**

Section 4 of Ch. 158, Laws 1969 pro-

**80-1417. Removal of patients from state custodial institutions without permission of staff a misdemeanor—penalty.** A person other than a parent or one having legal custody of the person of the patient or inmate who permits or assists a resident patient or inmate of a state custodial institution to leave the institution without permission from the properly authorized member of the staff or proper court order, is guilty of a misdemeanor and upon conviction, is punishable by imprisonment in a county jail not exceeding six (6) months, or by a fine not exceeding five hundred dollars (\$500), or both.

Nothing herein is to be construed to conflict with laws relative to inmates of the Montana state prison.

**History:** En. Sec. 1, Ch. 361, L. 1971.

patients from state custodial institutions without permission of the staff.

**Title of Act**

An act to prohibit the removal of

**80-1418. Distribution of alcoholic beverages and drugs to patients at state custodial institutions a misdemeanor—penalty.** A person who knowingly sells or distributes, or attempts to sell or distribute, alcoholic beverages or drugs to the resident patients or inmates of a state custodial institution without permission of the medical staff, is guilty of a misdemeanor and upon conviction, is punishable by imprisonment in a county jail not exceeding six (6) months, or by a fine not exceeding five hundred dollars (\$500), or both.

Nothing herein is to be construed to conflict with laws relative to inmates of the Montana state prison.

**History:** En. Sec. 1, Ch. 362, L. 1971.

tion of alcoholic beverages and drugs to patients at state custodial institutions.

**Title of Act**

An act to prohibit the sale or distribu-

## CHAPTER 16—PAYMENTS FOR THE CARE OF RESIDENTS OF INSTITUTIONS

### Section

80-1601. Institutions subject to per diem charge.

80-1603. Monthly assessment of charges—annual computation of rate—investigation—claim of state—review—deposit of receipts.

**80-1601. Institutions subject to per diem charge.** The state department of institutions shall collect and process per diem payments for the care of residents in the following institutions and for the care of those persons in foster homes or group homes under the jurisdiction of the aftercare division of the department of institutions:

- (1) Montana children's center
- (2) Warm Springs state hospital
- (3) Boulder river school and hospital
- (4) Galen state hospital
- (5) Montana veterans' home

(6) Montana center for the aged.

(7) Eastmont training center.

**History:** En. Sec. 13, Ch. 199, L. 1965; amd. Sec. 4, Ch. 320, L. 1967; amd. Sec. 1, Ch. 276, L. 1969; amd. Sec. 1, Ch. 191, L. 1971.

#### Amendments

The 1967 amendment, in subparagraph (2), substituted "Warm Springs state hospital" for "State Hospital"; in subparagraph (3), substituted "Boulder river school and hospital" for "State Training School and Hospital"; and, in subparagraph (4), substituted "Galen state hospital" for "State Pulmonary Disease Hospital."

The 1969 amendment added subparagraph (7).

The 1971 amendment inserted "and for the care of those persons in foster homes or group homes under the jurisdiction of the aftercare division of the department of institutions" at the end of the preliminary paragraph.

#### Effective Dates

Section 2 of Ch. 276, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 10, 1969.

Section 2 of Ch. 191, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 3, 1971.

**80-1603. Monthly assessment of charges—annual computation of rate—investigation—claim of state—review—deposit of receipts.** (1) The department shall assess monthly against each resident or responsible person, the full per diem charge, a proportionate share of the per diem charge, or no per diem charge, based upon financial information given to the department during its investigation. The per diem shall be computed on July 1 of each year by the director of institutions.

(2) For the purpose of such investigations, every agency and department of the state is required to render all reasonable assistance to the department of institutions in obtaining all information necessary for the proper implementation of the purposes of such an investigation. The director and any representative of the department duly authorized by the director, shall have the power to administer oaths, take testimony, subpoena and compel the attendance of witnesses and the production of books, papers, records and documents deemed material appurtenant in connection with the duty of securing payments for support as provided by this act. Any person failing to obey such subpoena, upon petition of the director or representative of the department, to any judge of the district court of the state of Montana, may be ordered by the judge to appear and show cause for his disobedience of the subpoena. The judge, after hearing, may order that the subpoena be obeyed, or if it is made to appear to the judge that the subpoena was for any reason inappropriately issued, may dismiss the petition. Any person who fails to obey the subpoena when ordered to do so by the judge may be punished as for contempt of court on application of the district court by the director or his representative.

(3) The state of Montana shall have a claim against the estate of any patient and against the estate of any responsible person, for any amount due and owing to the state of Montana at the date of death or such resident or such person. Such claim against the estate of any responsible person shall not have priority against such estate for the amount necessary to rear and educate surviving children of the responsible person.

(4) The attorney general shall collect any claim which the state may have hereunder against such estate. No such claim shall be enforced against

any real estate while it is occupied as a home by the surviving spouse or the resident or responsible person.

(5) If a resident or responsible person disagrees with the determination of the department as to the ability of such resident or responsible person to pay all or any part of the per diem charge, an appeal may be filed within thirty (30) days of such determination with the state board of institutions. If such resident thereafter disagrees with the determination of the appeal by the state board of institutions, an appeal may be filed and taken to any court of record in Montana having jurisdiction of the resident or responsible person liable for such payment.

(6) The department may, at any time, review and change any determination for per diem payments. In any case, however, no resident of an institution shall be released by reason of the nonpayment of the per diem, if in the judgment of the superintendent of the institution at which he is a resident, such release is medically inadvisable.

(7) All per diem payments received by the department shall be deposited in the state treasury to the credit of the general fund.

**History:** En. Sec. 15, Ch. 199, L. 1965; amd. Sec. 1, Ch. 240, L. 1969.

#### Amendments

The 1969 amendment rewrote subsection (1), for previous text of which see parent volume; inserted subsections (2) to (4); redesignated and rewrote former subsec-

tion (2) as subsection (5); redesignated former subsection (3) as subsection (6) and deleted "and may, if necessary, request a further investigation by a county department of public welfare" at the end of the first sentence; and redesignated former subsection (4) as subsection (7).

### CHAPTER 17—GALEN STATE HOSPITAL

#### Section

80-1701. Location and primary function of hospital—secondary function.

80-1702. Qualifications of superintendent.

80-1703. Transfer of patient to mental institution—notice to relatives.

80-1704. Juvenile reception and evaluation center—committal—duties—transportation to and from.

**80-1701. Location and primary function of hospital—secondary function.** (1) The institution located at Galen is the Galen state hospital and, as its primary function, provides:

(a) Treatment of tuberculosis and silicosis (commonly called miner's consumption).

(2) If there are space and funds available, the hospital shall also treat the following:

(a) Emphysema, bronchiectasis, carcinoma of the lung and other diseases of the lung pertaining to pulmonary disorders.

(b) Geriatric and senile patients afflicted with pulmonary disorders and patients who are residents of another state institution.

**History:** En. Sec. 17, Ch. 199, L. 1965; amd. Sec. 5, Ch. 320, L. 1967.

#### Amendments

The 1967 amendment substituted "Galen state hospital" for "State Pulmonary Disease Hospital" in subsection (1).

**80-1702. Qualifications of superintendent.** The superintendent of Galen state hospital shall be a physician legally qualified to practice medicine in



Montana with at least (4) years in the practice of his profession, including at least one (1) year's experience in a general hospital.

**History:** En. Sec. 18, Ch. 199, L. 1965; **Amendments**  
amd. Sec. 6, Ch. 320, L. 1967.

The 1967 amendment substituted "Galen state hospital" for "state pulmonary disease hospital."

**80-1703. Transfer of patient to mental institution—notice to relatives.**

A mentally retarded or mentally ill person residing at Galen state hospital may be transferred to the Warm Springs state hospital, the Montana center for the aged, or the Boulder river school and hospital with the approval of the department of institutions if the department determines that the transfer will be in the best interests of the patient. Unless a medical or psychiatric emergency exists fifteen (15) days prior to the transfer the department shall send notice of the proposed transfer to the patient's parent, guardian, or spouse, or if none is known, his nearest relative or friend. In the case of an emergency transfer, the department shall send notice within seventy-two (72) hours after the time of transfer.

**History:** En. Sec. 19, Ch. 199, L. 1965;  
amd. Sec. 7, Ch. 320, L. 1967.

ease hospital"; substituted "Warm Springs state hospital" for "state hospital"; substituted "Boulder river school and hospital" for "state training school and hospital"; and made a minor change in punctuation.

**Amendments**

The 1967 amendment substituted "Galen state hospital" for "state pulmonary dis-

**80-1704. Juvenile reception and evaluation center—committal—duties—**

**transportation to and from.** The reception and evaluation center for children at the Galen state hospital as established by law shall be subject to the rules and regulations adopted and promulgated by the state department of institutions and shall accept from the juvenile courts the temporary custody of children then being held on a charge, under which the child could be adjudged a delinquent. For the period during which children are in the custody of the reception and evaluation center for children, it shall provide for them a residential program of care and study. The reception and evaluation center for children may not in any event detain or hold a child in custody for a period of time greater than forty-five (45) days. To assist the juvenile courts in making a decision regarding the child's disposition the reception and evaluation center for children will forward recommendations to the court to include, but not limited to, a psychiatric social summary; psychological evaluation, medical report; diagnostic school report; and a psychiatric report prepared by a consulting psychiatrist, for those for whom this kind of evaluation is considered necessary. Transportation to and from the reception and evaluation center shall be provided by the county of such child's residence.

**History:** En. Sec. 20, Ch. 320, L. 1967.

**Cross-References**

Juvenile court committal of delinquents, sec. 10-611.

**Repealing Clause**

Section 21 of Ch. 320, Laws 1967 read "Sections 80-2201 and 80-2208, R. C. M. 1947, are hereby repealed."

## CHAPTER 19—STATE PRISON

## Section

- 80-1903. Working hours of prison employees.  
 80-1905. Good time allowance—forfeiture—probationers and parolees—application of prior law.  
 80-1908. Commitment of inmates to state hospital.  
 80-1909. Establishment of intensive rehabilitation center authorized.  
 80-1910. Standards of admission.  
 80-1911. Management and control of center.

**80-1903. Working hours of prison employees.** A period of eight (8) hours in each period of twenty-four (24) consecutive hours constitutes a day's work for all employees of the state prison. The staff of correctional personnel shall not work more than forty (40) hours or five (5) days a week except in cases of riots, escapes or other emergencies endangering health, life, or property.

**History:** En. Sec. 26, Ch. 199, L. 1965;  
 amd. Sec. 1, Ch. 232, L. 1969.

**Amendments**

The 1969 amendment substituted "forty (40)" for "forty-eight" before "hours" and "five (5)" for "six" before "days" in the second sentence.

**80-1905. Good time allowance—forfeiture—probationers and parolees—application of prior law.** (1) The state department of institutions shall adopt rules and regulations providing for the granting of good time allowance for inmates employed in any prison work or activity. The good time allowance shall operate as a credit on his sentence as imposed by the court, conditioned upon the inmate's good behavior and compliance with the rules and regulations made by the department or the warden. The rules adopted by the department may not grant good time allowance to exceed:

(a) to (c). \* \* \* [Same as parent volume.]

(d) thirteen (13) days per month for those inmates enrolled in school inside the walls who successfully complete the course of study or who while so enrolled are released from prison by discharge or parole.

(e) ten (10) days for each pint of blood donated by an inmate.

(2) and (3). \* \* \* [Same as parent volume.]

**History:** En. Sec. 28, Ch. 199, L. 1965;  
 amd. Sec. 1, Ch. 219, L. 1967.

**Discretion of Parole Board**

Where petitioner violated his parole, it was completely within discretion of parole board to withdraw his "good time" as provided in this section. Petition of Spurlock, 153 M 475, 458 P 2d 80.

**Amendments**

The 1967 amendment added subdivisions (d) and (e) in subsection (1).

## DECISIONS UNDER FORMER LAW

**Forfeiture of Good Time Allowance**

A prisoner who, by virtue of former section 80-740.1, was earning good time under former section 80-739, the prior law, was subject to the provisions of former section 80-741, the forfeiture statute, which existed under the old law. Petition of Brandt, 147 M 175, 410 P 2d 708.

Contention by petitioner for writ of

habeas corpus that board of pardons did not have authority to revoke earned good time after violation of parole by petitioner under this section was without merit since petitioner was sentenced prior to 1955 and section 80-741, in effect at that time, allowed such revocation of earned good time. Petition of McIlhargey, 154 M 510, 463 P 2d 476.

**80-1908. Commitment of inmates to state hospital.** The procedures for committing an inmate of the state prison to the state hospital are the same as for any other person. Provided, however, that nothing in this act shall be deemed to prevent the temporary transfer of an inmate of the state prison to the Warm Springs state hospital for treatment or evaluation. Such transfers may only be authorized by the department of institutions upon recommendation of the warden of the state prison and the superintendent of the Warm Springs state hospital and shall be for a period not to exceed sixty days and shall not exceed a total of one hundred twenty days in any twelve-month period.

**History:** En. Sec. 31, Ch. 199, L. 1965; amd. Sec. 1, Ch. 294, L. 1969.

**Effective Date**

Section 2 of Ch. 294, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 11, 1969.

**Amendments**

The 1969 amendment added the last two sentences.

**80-1909. Establishment of intensive rehabilitation center authorized.** Within the budgetary limits provided them by law, the board of institutions is authorized to establish on property owned by the state of Montana on which prison facilities are or may be located a prison facility designed to make possible the segregation of certain types of prisoners from other prisoners.

**History:** En. Sec. 1, Ch. 221, L. 1969.

**Title of Act**

An act providing for the establishment of an intensive rehabilitation center at the

Montana state prison; providing standards of admission to such center; providing for the management and control of such center.

**80-1910. Standards of admission.** The facility shall be designated and known as the "intensive rehabilitation center" and shall be the place of custody for those male prisoners who in consideration of their age, type of crime for which committed, physical condition, behavior, attitude and prospects of reformation, are those most likely to benefit from such place of custody.

**History:** En. Sec. 2, Ch. 221, L. 1969.

**80-1911. Management and control of center.** The warden of the Montana state prison, subject to the supervision and control of the department of institutions shall operate and manage such intensive rehabilitation center, and shall make such rules and regulations for the operation, management, and admission to such center as may from time to time be necessary and desirable.

**History:** En. Sec. 3, Ch. 221, L. 1969.

CHAPTER 20—STATE BUREAU OF CRIMINAL IDENTIFICATION  
AND INVESTIGATION

**80-2001. Bureau under prison warden—appointment of supervisor.**

**Cross-References**

Bureau abolished and functions transferred, sec. 82A-1202(1).



## CHAPTER 21—MONTANA CHILDREN'S CENTER

**80-2101. Location and function of center.****Cross-References**

High school tuition payments, sec. 75-6319.

CHAPTER 22—STATE VOCATIONAL SCHOOL FOR GIRLS AND  
STATE INDUSTRIAL SCHOOL**Section**

- 80-2202. Superintendents to manage facilities.
- 80-2203. Curricula at facilities.
- 80-2204. Maximum age of commitment.
- 80-2205. Medical examination before commitment—records required to accompany child committed.
- 80-2206. Commitment expenses—arrangement for transportation.
- 80-2209. Transfer of child to any other facility or institution—notice to parents or guardian and committing court.
- 80-2210. Commutation of sentence to state prison—commitment of child to department of institutions—revocation of commutation—transfer of child to a juvenile facility.
- 80-2211. Child leaving juvenile facility without permission—apprehension and return.
- 80-2212. Aiding resident in leaving school—penalty.

**80-2201. Repealed.****Repeal**

This section (Sec. 45, Ch. 199, L. 1965), relating to the location and functions of

vocational and industrial schools, was repealed by Sec. 21, Ch. 320, Laws 1967 and Sec. 34, Ch. 320, Laws 1967.

**80-2202. Superintendents to manage facilities.** Each facility provided for herein shall be under the immediate management and control of a superintendent.

**History:** En. Sec. 46, Ch. 199, L. 1965; amd. Sec. 11, Ch. 320, L. 1967.

facility provided for herein" for "The state vocational school for girls and the state industrial school"; and made a minor change in phraseology.

**Amendments**

The 1967 amendment substituted "Each

**80-2203. Curricula at facilities.** The academic and vocational curriculum in facilities containing academic and vocational training shall include such academic and vocational subjects as are taught in the public schools of the state, and shall conform to the standards set by the state board of education.

**History:** En. Sec. 47, Ch. 199, L. 1965; amd. Sec. 12, Ch. 320, L. 1967.

academic and vocational curriculum in facilities containing academic and vocational training" for "The curricula of the state vocational school for girls and the state industrial school."

**Amendments**

The 1967 amendment substituted "The

**80-2204. Maximum age of commitment.** No child shall be committed by any juvenile court to the Mountain View school, Pine Hills school or other juvenile facility who has attained the age of eighteen (18) years, except, however, that any person under twenty-one (21) years who prior to attaining the age of eighteen (18) years came under the jurisdiction of the juvenile court by reason of delinquent conduct and whose adjudication of delinquency, including the finding that commitment to some in-

stitution was necessary is not made until after the child reaches the age of eighteen (18) years shall be committed to the department of institutions who shall then have the obligation to test and evaluate the person to determine the proper place of detention for the person who shall thereupon be confined at that institution until the person shall have attained the age of twenty-one (21) years unless sooner discharged by the department of institutions.

**History:** En. Sec. 48, Ch. 199, L. 1965; amd. Sec. 13, Ch. 320, L. 1967; amd. Sec. 15, Ch. 262, L. 1969.

#### Amendments

The 1967 amendment substantially rewrote this section. For previous text, see parent volume.

The 1969 amendment rewrote this section which formerly read, "No child shall

be committed to the Mountain View school, Pine Hills school or the department of institutions who has attained the age of eighteen (18)."

#### Repealing Clause

Section 16 of Ch. 262, Laws 1969 read "Sections 10-604, 10-605, 10-609, 10-618, 10-619, 10-620, 10-632, 75-3001, and 75-3002, R. C. M. 1947, are repealed."

**80-2205. Medical examination before commitment—records required to accompany child committed.** Before a child is committed to the Mountain View school or the Pine Hills school or the department of institutions he shall be examined by a licensed physician. A child committed to one of the schools or the department of institutions shall be accompanied by the order of commitment, a medical examination report, an adequate social history, and any school records.

**History:** En. Sec. 49, Ch. 199, L. 1965; amd. Sec. 14, Ch. 320, L. 1967.

#### Amendments

The 1967 amendment substantially rewrote this section. For previous text, see parent volume.

**80-2206. Commitment expenses—arrangement for transportation.** The expenses of committing a child to the Mountain View school or the Pine Hills school or to the department of institutions and transporting such child to the Mountain View school or the Pine Hills school or the place designated by the department for it to receive custody and the expense of returning such child to the county of residence shall be borne by the county of residence. The district judge shall arrange for transportation of the child to the place where the department of institutions has directed that it will receive custody of such child.

**History:** En. Sec. 50, Ch. 199, L. 1965; amd. Sec. 15, Ch. 320, L. 1967.

#### Amendments

The 1967 amendment completely rewrote this section. For previous text, see parent volume.

### 80-2208. Repealed.

#### Repeal

This section (Sec. 52, Ch. 199, L. 1965), relating to the placement or discharge of residents of vocational and industrial

schools, was repealed by Sec. 21, Ch. 320, Laws 1967 and Sec. 34, Ch. 320, Laws 1967.

**80-2209. Transfer of child to any other facility or institution—notice to parents or guardian and committing court.** (1) The department of institutions upon recommendation of the superintendent of a facility may transfer a child resident in one of its juvenile facilities to any other facility or institution under the jurisdiction and control of the department.

(2) In the case of transfers of children in juvenile facilities to Warm Springs state hospital or Boulder river school and hospital and unless medical or psychiatric emergency exists, fifteen (15) days prior to the transfer the department of institutions shall send notice of the proposed transfer to the parents or legal guardian of the child and to the district court who committed the child. In the case of an emergency transfer, the department shall send notice within seventy-two (72) hours after the time of transfer.

History: En. Sec. 53, Ch. 199, L. 1965;  
amd. Sec. 16, Ch. 320, L. 1967.

#### Amendments

The 1967 amendment completely rewrote this section. For previous text, see parent volume.

**80-2210. Commutation of sentence to state prison—commitment of child to department of institutions—revocation of commutation—transfer of child to a juvenile facility.** (1) Upon the application of a person under the age of twenty-one (21) years who has been sentenced to the state prison, or upon the application of his parents or guardians, the governor may, after consulting with the department of institutions and with the approval of the board of pardons, commute the sentence by committing such person to the department of institutions during his minority or until sooner placed or discharged.

(2) If such person's behavior after being committed to the department of institutions indicates that he is not a proper person to reside at one of the department's juvenile facilities, the governor after consulting with the department of institutions with the approval of the board of pardons, may revoke the commutation and return him to the state prison to serve out his unexpired term, and the time spent by him at one of the department juvenile facilities or while a refugee from one of the department juvenile facilities, shall not be considered as a part of his original sentence.

Upon recommendation of the warden and with the approval of the department of institutions a person under the age of twenty-one (21) years, who has been sentenced to the state prison, may be transferred to any juvenile facility under the jurisdiction and control of the department. Provided, further, however, that upon recommendation of the warden and approval of a person sentenced to the state prison, or application of a person sentenced to the state prison and approval of the warden, and with the approval of the department of institutions such person sentenced to the state prison who is twenty-five (25) years old or younger may be transferred to the Swan River youth forest camp. Upon such transfer such person shall be under the supervision and control of the facility to which he is transferred.

If such person's behavior after transfer to such juvenile facility indicated he might be released on parole or his sentence commuted and he be discharged from custody, the superintendent of such facility, with the approval of the department, may make an appropriate recommendation to the state board of pardons and the governor who may, in their discretion, parole such person or commute his sentence.

If such person's behavior after transfer to a juvenile facility indicates



he is not a proper person to reside in such facility, upon recommendation of the superintendent, and with the approval of the department, such person shall be returned to the state prison to serve out his unexpired term.

**History:** En. Sec. 54, Ch. 199, L. 1965; amd. Sec. 17, Ch. 320, L. 1967; amd. Sec. 1, Ch. 367, L. 1971.

#### Amendments

The 1967 amendment, in subsection (1), substituted "twenty-one (21)" for "eighteen (18)"; substituted "department of institutions" for "state vocational school for girls or state industrial school" before "during his minority"; in subsection (2), substituted "committed to the department of institutions" for "sent to one of such schools" before "indicates"; substituted "one of the department's juvenile facilities" for "one of the schools" after "reside at"; substituted "department juvenile facilities or while a refugee from one of

the department juvenile facilities" for "schools, or while a refugee from one of the schools" before "shall not be considered"; and added the second, third and fourth paragraphs in subsection (2).

The 1971 amendment substituted "person" for "child" throughout the section; and inserted in the second paragraph of subsection (2) the proviso for the transfer of prisoners of the age of twenty-five or younger to the Swan River youth forest camp.

#### Effective Date

Section 2 of Ch. 367, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 15, 1971.

**80-2211. Child leaving juvenile facility without permission—apprehension and return.** A child who has left a juvenile facility of the department without permission may be apprehended and returned by any citizen.

**History:** En. Sec. 55, Ch. 199, L. 1965; amd. Sec. 18, Ch. 320, L. 1967.

#### Amendments

The 1967 amendment substituted "a juvenile facility of the department" for "the state vocational school for girls or state industrial school."

**80-2212. Aiding resident in leaving school—penalty.** A person who permits or assists a resident of any juvenile facility to leave a facility without permission, or who furnished or attempts to furnish to such a resident a tool, weapon, or other article with the intent of aiding him to leave without permission, or who harbors or conceals a resident who has left without permission, shall on conviction be punished by imprisonment for a term of not less than six (6) months or more than two (2) years, or by a fine not exceeding one thousand dollars (\$1,000), or by both such fine and imprisonment.

**History:** En. Sec. 56, Ch. 199, L. 1965; amd. Sec. 19, Ch. 320, L. 1967.

#### Amendments

The 1967 amendment substituted "any

juvenile facility to leave a facility" for "the state vocational school for girls or the state industrial school to leave the school" after "a resident of."

## CHAPTER 23—BOULDER RIVER SCHOOL AND HOSPITAL

### Section

- 80-2303. Residence required for admittance to school.
- 80-2304. Application of parent or guardian for admission of mentally retarded person—supporting affidavits—social summary.
- 80-2305. Applications heard by district court—hearing—medical and psychological examination—social summary—order approving application.
- 80-2306. Admission to school to await accommodations—records to accompany person admitted—transportation costs.

80-2307. Temporary admissions to school.

80-2308. Transfer of patient to hospital—notice to parents or guardian and committing court.

80-2309. Discharge from school.

80-2310. Mental retardation center at Glendive—services provided.

80-2311. Capacity of mental retardation center.

80-2312. Supervision of Glendive center—transfers to Boulder river school and hospital.

### 80-2301, 80-2302. Repealed.

#### Repeal

Sections 80-2301 and 80-2302 (Secs. 58, 59, Ch. 199, L. 1965; Secs. 22, 23, Ch. 320,

L. 1967), relating to management of the Boulder River school and hospital, were repealed by Sec. 7, Ch. 111, Laws 1971.

**80-2303. Residence required for admittance to school.** To be eligible for admittance to the Boulder river school and hospital, a mentally retarded person or his parent or guardian shall have been a resident of the state for at least one (1) year.

**History:** En. Sec. 60, Ch. 199, L. 1965; amd. Sec. 24, Ch. 320, L. 1967.

#### Amendments

The 1967 amendment substituted "Boulder river school and hospital" for "state training school and hospital."

**80-2304. Application of parent or guardian for admission of mentally retarded person—supporting affidavits—social summary.** If an application for admission of a mentally retarded person to the Boulder river school and hospital is made by the guardian or parent it shall be filed with the department of institutions, in a form prescribed by the department and available at the county department of public welfare office. The application shall be supported by the affidavit of two (2) physicians or one (1) psychologist acceptable to the department of institutions and one (1) physician certifying that the person whose admission is sought is mentally retarded. The county department of public welfare, where the retarded person resides, shall prepare a social summary on the retarded person for the use of the Boulder river school and hospital.

**History:** En. Sec. 61, Ch. 199, L. 1965; amd. Sec. 25, Ch. 320, L. 1967.

#### Amendments

The 1967 amendment substituted "Boulder river school and hospital" for "state training school and hospital" wherever it appears in this section.

**80-2305. Applications heard by district court—hearing—medical and psychological examination—social summary—order approving application.** If the application for admission is made by someone other than the parent or legal guardian of a mentally retarded person, it shall be filed with the clerk of the district court. The application shall be in a form prescribed by the state department of institutions. The judge shall set the time and place for hearing the application, and the clerk shall notify the parents or guardians, and other interested persons. The court shall name two (2) physicians or one (1) psychologist acceptable to the department of institutions, and one (1) physician, to examine the person whose admission is sought. The county department of public welfare shall prepare a social summary of the person for the use of the court. If the court concludes from the examination and other information obtained at the hear-

ing that the person whose admission is sought, is a proper person for admission to the Boulder river school and hospital, the court shall issue an order approving the application.

History: En. Sec. 62, Ch. 199, L. 1965;  
amd. Sec. 26, Ch. 320, L. 1967.

**Amendments**

The 1967 amendment substituted "Boulder river school and hospital" for "state training school and hospital" in the sixth sentence.

**80-2306. Admission to school to await accommodations—records to accompany person admitted—transportation costs.** A person may not be taken to the Boulder river school and hospital until the department of institutions has ascertained whether or not there is room at the school to accommodate the person. If there is not room, the application shall be filed with the department, which shall grant admission when room becomes available. When there is room the person shall be sent to the school with a copy of the court order, if any, the application, and the social summary prepared by the county department of public welfare. The costs of transportation to the school shall be paid by the county where the person resides.

History: En. Sec. 63, Ch. 199, L. 1965;  
amd. Sec. 27, Ch. 320, L. 1967.

**Amendments**

The 1967 amendment substituted "Boulder river school and hospital" for "state training school and hospital" in the first sentence.

**80-2307. Temporary admissions to school.** In order to utilize facilities more efficiently during the temporary or seasonal decreases in population, and in order to extend the benefits of training and treatment programs offered by the Boulder river school and hospital to mentally retarded persons whose extended commitment is not sought, the department of institutions may admit a mentally retarded person to the school for a period not exceeding sixty (60) days on the application of the person's parent or guardian.

History: En. Sec. 64, Ch. 199, L. 1965;  
amd. Sec. 28, Ch. 320, L. 1967.

**Amendments**

The 1967 amendment substituted "Boulder river school and hospital" for "state training school and hospital."

**80-2308. Transfer of patient to hospital—notice to parents or guardian and committing court.** With the approval of the department of public institutions, a patient of the Boulder river school and hospital may be transferred to the Warm Springs state hospital or the Galen state hospital. Unless a medical or psychiatric emergency exists, fifteen (15) days prior to the transfer the department shall send notice of the proposed transfer to the parents or legal guardian of the person, and to the district court, if any, which committed the person. In the case of an emergency transfer, the department shall send notice within seventy-two (72) hours after the time of transfer.

History: En. Sec. 65, Ch. 199, L. 1965;  
amd. Sec. 29, Ch. 320, L. 1967.

**Amendments**

The 1967 amendment substituted "Boulder river school and hospital" for "state



training school and hospital" after "patient of the"; and substituted "Warm Springs state hospital or the Galen state hospital" for "state hospital of (or) the state pulmonary disease hospital" after "transferred to the" in the first sentence.

**80-2309. Discharge from school.** (1) With the approval of the department of institutions, the superintendent may discharge a person admitted to the Boulder river school and hospital.

(2). \* \* \* [Same as parent volume.]

**History:** En. Sec. 66, Ch. 199, L. 1965;  
amd. Sec. 30, Ch. 320, L. 1967.

#### Amendments

The 1967 amendment substituted "Boulder river school and hospital" for "state training school and hospital" at the end of subsection (1).

**80-2310. Mental retardation center at Glendive—services provided.** The board of institutions shall establish, construct, equip, maintain and provide services for a mental retardation center at Glendive to be called "Eastmont training center" for residential and outpatient care of mentally retarded persons residing in Montana. The center shall be planned, constructed, equipped and shall provide services similar to those provided at the state training school and hospital at Boulder; provided, however, that the center shall not be a duplication of the state training school and hospital but shall be an extension thereof.

**History:** En. Sec. 3, Ch. 255, L. 1967;  
amd. Sec. 1, Ch. 275, L. 1969.

#### Amendments

The 1969 amendment inserted "to be called 'Eastmont training center'" after "at Glendive" in the first sentence.

**80-2311. Capacity of mental retardation center.** The center to be constructed under the provisions of this act shall not exceed the requirements of two hundred (200) bed units.

**History:** En. Sec. 4, Ch. 255, L. 1967.

**80-2312. Supervision of Glendive center—transfers to Boulder river school and hospital.** The board of institutions shall plan, supervise, and provide rules and regulations for, but not limited to, the construction, equipment, maintenance, staff requirements and services to be provided at the center. The board shall provide for temporary transfers from the Eastmont training center to the Boulder river school and hospital for special medical, psychological, surgical and other services on a temporary basis.

**History:** En. Sec. 5, Ch. 255, L. 1967;  
amd. Sec. 2, Ch. 275, L. 1969.

"or" before "other services on a temporary basis" in the second sentence.

#### Amendments

The 1969 amendment substituted "Eastmont training center to the Boulder river school and hospital" for "Glendive center to the state training school and hospital at Boulder"; and substituted "and" for

#### Effective Date

Section 3 of Ch. 275, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 10, 1969.

CHAPTER 24—DIVISION OF MENTAL HYGIENE—STATE HOSPITAL  
AND MENTAL HEALTH CENTERS

## Section

- 80-2401. Location and function of hospital—hospital in division of mental hygiene.
- 80-2401.1. Definition of terms.
- 80-2402. Superintendent is supervisor of division—qualifications of superintendent.
- 80-2403. Functions of division of mental hygiene.
- 80-2404. Alcoholism services center.
- 80-2405. Department of institutions to control public mental health programs—establishment of standards, qualifications and compensation—compliance with federal guidelines.
- 80-2406. Clinics and community services.
- 80-2407. Mental health regions.
- 80-2408. Continuation of services.
- 80-2409. Availability of services.
- 80-2410. Mental health centers established—staffing.
- 80-2411. Supervision of mental health centers.
- 80-2412. Interstate compact on mental health enacted—text.

**80-2401. Location and function of hospital—hospital in division of mental hygiene.** The institution located at Warm Springs is the “Warm Springs state hospital.” The only function of the state hospital is the care and treatment of mentally ill persons and alcoholics. The Warm Springs state hospital is in the division of mental hygiene of the department of institutions.

**History:** En. Sec. 67, Ch. 199, L. 1965;  
amd. Sec. 31, Ch. 320, L. 1967.

**Amendments**

The 1967 amendment substituted “Warm Springs state hospital” for “state hospital” throughout this section.

**80-2401.1. Definition of terms.** As used in this act, unless the context clearly indicates otherwise:

(1) Public mental health facility is any public service or group of services operating under the guidelines of the division of mental hygiene of the department of institutions offering mental health care on an inpatient or outpatient basis to the mentally ill.

(2) Community comprehensive mental health center is a facility not necessarily encompassed within one building offering at least the following five (5) basic mental health services to the public:

- (a) Twenty-four (24) hour inpatient care.
- (b) Part-time hospitalization.
- (c) Outpatient service.
- (d) Emergency service.
- (e) Consultation and education in mental health.

(3) Mental health clinic is an outpatient facility offering mental health care to the public.

**History:** En. Sec. 1, Ch. 246, L. 1967.

**Title of Act**

An act expanding duties and services of the division of mental hygiene of the state board of public institutions by establishing and conducting mental health clinics and community comprehensive mental health centers; creating regional mental health boards; providing for the

organization thereof; defining the duties of regional mental health boards; authorizing the participation of the division of mental hygiene of the state board of public institutions in contractual or cooperative arrangements with regional mental health boards and others; providing the division of mental hygiene and the regional mental health boards the authority to receive gifts, grants, dona-

tions, and any other form of support and enabling counties participating in regional mental health programs to use tax moneys to finance the programs of prevention, diagnosis and treatment of mental illness; giving the division of mental hygiene of the state board of public institutions general

supervisory power and control over all public mental health programs in the state of Montana; amending section 80-2403 of the Revised Codes of Montana, 1947, enacted as section 69, chapter 199, Laws of 1965; and repealing all other acts and parts of acts in conflict herewith.

**80-2402. Superintendent is supervisor of division—qualifications of superintendent.** The superintendent of the Warm Springs state hospital is the supervisor of the division of mental hygiene. The superintendent shall be a licensed physician who has fulfilled the residency requirements of the American Board of Psychiatry and Neurology in the speciality of psychiatry.

**History:** En. Sec. 63, Ch. 199, L. 1965; amd. Sec. 32, Ch. 320, L. 1967.

**Amendments**

The 1967 amendment substituted "Warm Springs state hospital" for "state hospital" in the first sentence.

**80-2403. Functions of division of mental hygiene.** The division of mental hygiene of the department of institutions shall:

(1) Take cognizance of matters affecting the mental health of the citizens of the state.

(2) Initiate preventive mental hygiene activities of the state's mental health program, including but not limited to the implementation of mental health care and treatment, prevention and research as can best be accomplished by community centered services. Such means shall be utilized by the division of mental hygiene as will initiate and operate these services in co-operation with local agencies as established under provisions of sections 4 and 5 [80-2406 and 80-2407] below.

(3) Make scientific and medical research investigations relative to the incidence, cause, prevention and care of mental illness.

(4) Collect and disseminate information relating to mental hygiene.

(5) Prepare a comprehensive plan for the development of public mental health services in the state. Such public mental health services shall include, but not be limited to, community comprehensive mental health centers, mental hygiene clinics, traveling service units, consultative and educational services.

(6) Provide by regulation for the examination of persons, who shall apply for examination or who shall be admitted either as inpatients or outpatients into the state hospital or other public mental health facility under the supervision and control of the division of mental hygiene, for the purpose of diagnosing and prescribing treatment of mental illness.

(7) Receive from agencies of the government of the United States and other agencies, persons or groups of persons, associations, firms or corporations, grants of money, receipts from fees, gifts, supplies, materials, and contributions, for the development of mental health services within the state.

**History:** En. Sec. 69, Ch. 199, L. 1965; amd. Sec. 2, Ch. 246, L. 1967.

**Amendments**

The 1967 amendment added "including but not limited to \* \* \* below" after "mental health program" at the end of



subparagraph (2); in subparagraph (3), inserted "research" after "medical"; substituted "a comprehensive plan" for "plans" after "Prepare" at the beginning of subparagraph (5); inserted "public" before "mental" in the first sentence and added the second sentence to subparagraph (5); rewrote subparagraph (6), which formerly read, "Examine persons received into the state hospital and other persons who apply for examination, for the purpose of diagnosing and prescribing treatment of mental illness"; deleted old subparagraph (7), which read, "Establish and conduct clinics in cities and towns

of the state for the diagnosis and treatment of mental illness"; redesignated old subparagraph (8) as new subparagraph (7); and in new subparagraph (7), inserted "government of the" before "United States" near the beginning of the subparagraph; inserted "persons or groups of persons, associations, firms or corporations" after "agencies"; inserted "receipts from fees, gifts, supplies, materials and contributions" after "grants of money"; substituted "health" for "hygiene" before "services"; and deleted "and use such moneys in its operation" at the end of the subparagraph.

**80-2404. Alcoholism services center.** (1) There is an alcoholism services center at the Warm Springs state hospital. The admittance and discharge procedures for alcoholics are the same as for mentally ill persons. (2) and (3). \* \* \* [Same as parent volume.]

**History:** En. Sec. 70, Ch. 199, L. 1965; amd. Sec. 33, Ch. 320, L. 1967.

#### Amendments

The 1967 amendment substituted "Warm Springs state hospital" for "state hospital" at the end of the first sentence of subsection (1).

#### Repealing Clause

Section 34 of Ch. 320, Laws 1967 read "Section 80-2201, R. C. M. 1947, and section 80-2208, R. C. M. 1947, are hereby repealed."

#### Effective Date

Section 35 of Ch. 320, Laws 1967 read "The institutional name changes specified in this act shall be effective January 1, 1968."

**80-2405. Department of institutions to control public mental health programs—establishment of standards, qualifications and compensation—compliance with federal guidelines.** The department of institutions, through the division of mental hygiene, shall control the public mental health programs which receive any state assistance by establishing and promulgating rules, regulations, and standards for providing mental health facilities and services. It shall set minimum standards for programs, establish appropriate qualifications and compensation scales and personnel policies for persons employed in such programs. All public mental health facilities and services shall, subject to the approval of the department of institutions, comply with existing federal guidelines and with requirements which will enable them to qualify for available matching funds.

**History:** En. Sec. 3, Ch. 246, L. 1967.

**80-2406. Clinics and community services.** (1) The division of mental hygiene may establish and conduct community comprehensive mental health centers, mental health clinics and other facilities in cities, towns and areas of the state for the purpose of aiding in the prevention, diagnosis and treatment of mental illness. Such centers, clinics or other facilities may be provided directly by state agencies or indirectly through contract or co-operative arrangements with other agencies of government, regional or local, private or public agencies, private professional persons or hospitals, under rules and regulations promulgated and established by the division of mental hygiene.

(2) State funds specifically appropriated for regional mental health service programs shall not exceed fifty per cent (50%) of the total expenditures of the programs.

History: En. Sec. 4, Ch. 246, L. 1967.

**80-2407. Mental health regions.** (1) Mental health regions shall be established in the state mental health plan and shall conform to the mental health regions as established in the state mental health construction plan promulgated by the state board of health under sections 82-3314 to 82-3318, R.C.M. 1947, and the federal Community Mental Health Centers Act.

(2) Upon the establishment of the mental health regions, the county commissioners in each of the various counties in a region shall designate a person from their respective county to serve as a representative of the county on a regional mental health board, which board shall be established under guidelines adopted by the division of mental hygiene. All appointments to said board shall be for terms of two (2) years.

(3) The duties of any organized regional mental health board shall include:

(a) Annual review and evaluation of mental health needs and services within said region.

(b) Submission to the division of mental hygiene and to each of the participating counties within the region of plans and budget proposals to provide and support mental health services within the region.

(c) Establishment of a recommended proportionate level of financial participation by each of the counties involved in the provision of mental health service within the limits of this section.

(d) Receipt and administration of such moneys and other support as are made available for the purpose of providing mental health services by the participating agencies, including grants from the United States government and other agencies, receipts for established fees for services rendered, tax moneys, gifts, donations and other support.

All funds so received by the board shall be used to carry out the purposes of this act.

(e) Supervision by appropriate administrative staff personnel of the operation of community mental health services in the region.

(f) Keeping all records of the board and making such reports as may be required.

(4) Regional mental health board members shall be reimbursed from funds of the board for actual and necessary expense incurred in attending meetings and in the discharge of other board duties when assigned by the board.

(5) The regional board of mental health may submit to the board of county commissioners of each of the counties within the constituted mental health region an annual budget, specifying each county's recommended proportionate share, not later than June 10 in each year. If the board of county commissioners shall include in the county budget the county's proportionate share of the regional board's budget, it shall be designated as a participating county. Funds for each participating county's

proportionate share for the operation of mental health services within the region shall be derived from the county's general fund; provided, however, if the general fund is insufficient to meet the approved budget, a levy not to exceed one (1) mill may be made on the taxable valuation in addition to all other taxes allowed by law to be levied on such property.

(6) The regional board of mental health, with the approval of the division of mental hygiene, may establish a schedule of fees for mental health services supported by financial contributions of the region's participating counties, which fees shall be paid by each nonparticipating county for services rendered to the residents of such nonparticipating county. Such fees may be received by the board and used to implement the budget and to provide services.

**History:** En. Sec. 5, Ch. 246, L. 1967.

Act, referred to in subsection (1), is compiled in the United States Code as Tit. 42, secs. 2681 to 2687.

**Compiler's Notes**

The Community Mental Health Centers

**80-2408. Continuation of services.** Nothing in this act shall be construed to prevent the continuation of existing mental health services or facilities.

**History:** En. Sec. 6, Ch. 246, L. 1967.

**80-2409. Availability of services.** The services of the division of mental hygiene of the department of institutions shall be made available without discrimination on the basis of race, color, creed or ability to pay and shall comply with the provisions of Title VI of the Civil Rights Act of 1964.

**History:** En. Sec. 7, Ch. 246, L. 1967.

**Repealing Clause**

**Compiler's Notes**

Title VI of the Civil Rights Act of 1964, referred to in this section, is compiled in the United States Code as Tit. 42, secs. 2000d to 2000d-4.

Section 8 of Ch. 246, Laws 1967 repealed all acts and parts of acts in conflict therewith.

**80-2410. Mental health centers established—staffing.** (a) The board of institutions shall establish mental health centers in Miles City and Glasgow for the care and treatment of mentally ill persons residing in Montana. Each center shall be staffed with at least one of each of the following:

- (1) Psychiatrist.
- (2) Psychologist.
- (3) Psychiatric nurse or social worker.
- (b) Each center shall provide the following services:
  - (1) Short term inpatient service.
  - (2) Partial inpatient service.
  - (3) Rehabilitation.
  - (4) Communities education.

**History:** En. Sec. 1, Ch. 255, L. 1967.

**Title of Act**

An act requiring the board of institutions to establish mental health centers in Miles City and Glasgow for care and

treatment of mentally ill persons, providing staff and service requirements to be under supervision and regulations of the board; requiring the board to establish, construct, equip, maintain and staff a mental retardation center at Glendive, pro-



viding for residential and outpatient care of mentally retarded persons as an extension of the state training school and hospital under supervision and regulations

of the board, not to exceed two hundred bed units; and providing for temporary transfers to state training school and hospital at Boulder.

**80-2411. Supervision of mental health centers.** The mental health centers shall be established, organized and supervised by the board of institutions, under rules and regulations of the board authorized in section 80-145 [80-1405].

History: En. Sec. 2, Ch. 255, L. 1967.

**80-2412. Interstate compact on mental health enacted—text.** The interstate compact on mental health as contained herein is hereby enacted into law and entered into by this state with all other jurisdiction legally joining therein in the form substantially as follows:

The contracting states solemnly agree, that:

Article I. The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by co-operative action, to the benefit of the patients, their families, and society as a whole. Further, the party states find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient but that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the mentally ill and mentally deficient under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states in terms of such welfare.

Article II. As used in this compact:

(a) "Sending state" shall mean a party state from which a patient is transported pursuant to the provisions of the compact or from which it is contemplated that a patient may be so sent.

(b) "Receiving state" shall mean a party state to which a patient is transported pursuant to the provisions of the compact or to which it is contemplated that a patient may be so sent.

(c) "Institution" shall mean any hospital or other facility maintained by a party state or political subdivision thereof for the care and treatment of mental illness or mental deficiency.

(d) "Patient" shall mean any person subject to or eligible as determined by the laws of the sending state, for institutionalization or other care, treatment, or supervision pursuant to the provisions of this compact.

(e) "Aftercare" shall mean care, treatment and services provided a patient, as defined herein, on convalescent status or conditional release.

(f) "Mental illness" shall mean mental disease to such extent that a person so afflicted requires care and treatment for his own welfare, or the welfare of others, or of the community.

(g) "Mental deficiency" shall mean mental deficiency as defined by appropriate clinical authorities to such extent that a person so afflicted is

incapable of managing himself and his affairs, but shall not include mental illness as defined herein.

(h) "State" shall mean any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

Article III. (a) Whenever a person physically present in any party state shall be in need of institutionalization by reason of mental illness or treatment in an institution in that state irrespective of his residence, settlement, or citizenship qualifications.

(b) The provisions of paragraph (a) of this article to the contrary notwithstanding, any patient may be transferred to an institution in another state whenever there are factors based upon clinical determinations indicating that the care and treatment of said patient would be facilitated or improved thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion or portions thereof. The factors referred to in this paragraph shall include the patient's full record with due regard for the location of the patient's family, character of the illness and probable duration thereof, and such other factors as shall be considered appropriate.

(c) No state shall be obliged to receive any patient pursuant to the provisions of paragraph (b) of this article unless the sending state has given advance notice of its intention to send the patient; furnished all available medical and other pertinent records concerning the patient; given the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient if said authorities so wish; and unless the receiving state shall agree to accept the patient.

(d) In the event that the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that he would be taken if he were a local patient.

(e) Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

Article IV. (a) Whenever, pursuant to the laws of the state in which a patient is physically present, it shall be determined that the patient should receive aftercare or supervision, such care or supervision may be provided in a receiving state. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state shall have reason to believe that aftercare in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of affording the patient such aftercare in said receiving state, and such investigation shall be made with all reasonable speed. The request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identify of the person in whose charge it is proposed to place the patient, the complete medical history of the patient, and such other documents as may be pertinent.

(b) If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authorities in the receiving state find that the best interest of the patient would be served thereby, and if the public safety would not be jeopardized thereby, the patient may receive after-care or supervision in the receiving state.

(c) In supervising, treating, or caring for a patient on aftercare pursuant to the terms of this article, a receiving state shall employ the same standards of visitation, examination, care, and treatment that it employs for similar local patients.

Article V. Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities within and without the jurisdiction of the escapee in a manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, he shall be detained in the state where found pending disposition in accordance with law.

Article VI. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this compact through any and all states party to this compact, without interference.

Article VII. (a) No person shall be deemed a patient of more than one (1) institution at any given time. Completion of transfer of any patient to an institution in a receiving state shall have the effect of making the person a patient of the institution in the receiving state.

(b) The sending state shall pay all costs of and incidental to the transportation of any patient pursuant to this compact, but any two (2) or more party states may, by making a specific arrangement for that purpose, arrange for a different allocation of costs as among themselves.

(c) No provision of this compact shall be construed to alter or affect any internal relationships among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

(d) Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to any provision of this compact.

(e) Nothing in this compact shall be construed to invalidate any reciprocal agreement between a party state and a nonparty state relating to institutionalization, care or treatment of the mentally ill or mentally deficient, or any statutory authority pursuant to which such agreements may be made.

Article VIII. (a) Nothing in this compact shall be construed to abridge, diminish, or in any way impair the rights, duties, and responsi-



bilities of any patient's guardian on his own behalf or in respect of any patient for whom he may serve, except that where the transfer of any patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdiction in the receiving state may make such supplemental or substitute appointment and the court which appointed the previous guardian shall upon being duly advised of the new appointment, and upon the satisfactory completion of such accounting and other acts as such court may by law require, relieve the previous guardian of power and responsibility to whatever extent shall be appropriate in the circumstances; provided, however, that in the case of any patient having settlement in the sending state, the court of competent jurisdiction in the sending state shall have the sole discretion to relieve a guardian appointed by it or continue his power and responsibility, whichever it shall deem advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person or persons previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

(b) The term "guardian" as used in paragraph (a) of this article shall include any guardian, trustee, legal committee, conservator, or other person or agency however denominated who is charged by law with power to act for or responsibility for the person or property of a patient.

Article IX. (a) No provisions of this compact except Article V shall apply to any person institutionalized while under sentence in a penal or correctional institution or while subject to trial on a criminal charge, or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness or mental deficiency, said person would be subject to incarceration in a penal or correctional institution.

(b) To every extent possible, it shall be the policy of states party to this compact that no patient shall be placed or detained in any prison, jail or lockup, but such patient shall, with all expedition, be taken to a suitable institutional facility for mental illness or mental deficiency.

Article X. (a) Each party state shall appoint a "compact administrator" who, on behalf of his state, shall act as general co-ordinator of activities under the compact in his state and who shall receive copies of all reports, correspondence, and other documents relating to any patient processed under the compact by his state either in the capacity of sending or receiving state. The compact administrator or his duly designated representative shall be the official with whom other party states shall deal in any matter relating to the compact or any patient processed thereunder.

(b) The compact administrators of the respective party states shall have power to promulgate reasonable rules and regulations to carry out more effectively the terms and provisions of this compact.

Article XI. The duly constituted administrative authorities of any two (2) or more party states may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or co-operative basis whenever the states con-

cerned shall find that such agreements will improve services, facilities, or institutional care and treatment in the fields of mental illness or mental deficiency. No such supplementary agreement shall be construed so as to relieve any party state of any obligation which it otherwise would have under other provisions of this compact.

Article XII. This compact shall enter into full force and effect as to any state when enacted by it into law and such state shall thereafter be a party thereto with any and all states legally joining therein.

Article XIII. (a) A state party to this compact may withdraw therefrom by enacting a statute repealing the same. Such withdrawal shall take effect one (1) year after notice thereof has been communicated officially and in writing to the governors and compact administrators of all other party states. However, the withdrawal of any state shall not change the status of any patient who has been sent to said state or sent out of said state pursuant to the provisions of the compact.

(b) Withdrawal from any agreement permitted by Article VII (b) as to costs or from any supplementary agreement made pursuant to Article XI shall be in accordance with the terms of such agreement.

Article XIV. This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstances shall not be affected thereby. If this compact shall be held contrary to the constitution of any party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

The director of the department of institutions, hereafter called "the director," shall be the compact administrator and shall have the power to make any rules and regulations necessary for the administration of this article. The director shall co-operate with all departments, agencies, and officers of the state and any political subdivision thereof to facilitate the proper administration of the interstate compact on mental health or of any supplementary agreement or agreements entered into by this state thereunder.

The director may enter into supplementary agreements with appropriate officials of other states pursuant to Articles VII and XI of the compact.

The department of institutions in its annual budget shall include such amounts necessary to discharge the financial obligations incurred by it to carry out the purposes of the interstate compact on mental health, and the general assembly shall appropriate such sums necessary therefor.

The compact administrator is hereby directed to consult with the immediate family of any proposed transferee and, in the case of a proposed transferee from an institution in this state to an institution in another party state, to make no transfer out of the state without approval of the district or probate court. Before granting such approval the court shall hold such hearings as it deems appropriate. In addition, the court shall designate some appropriate person to deliver written notice of the

proposed transferee's right to a hearing to the proposed transferee and his guardian ad litem. The person serving such notices shall make a written return to the court that such has been done. At the conclusion of such hearing, if any, the court may approve the proposed transfer, order the release of the proposed transferee, or enter any other suitable order.

Duly authenticated copies of the article shall upon its approval, be transmitted by the secretary of state to the governor of each state, the attorney general, and the secretary of state of the United States, and the Council of State Governments.

**History:** En. Sec. 1, Ch. 112, L. 1971.

**Title of Act**

An act relating to the interstate compact on mental health authorizing the state of Montana to enter into a compact with any of the United States, its territories and possessions, for the treatment of mentally ill and mentally deficient; provid-

ing for a "compact administrator"; and providing an effective date.

**Effective Date**

Section 2 of Ch. 112, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 1, 1971.

## CHAPTER 26—DIVISION OF MENTAL RETARDATION

**Section**

- 80-2601. Establishment of division of mental retardation.
- 80-2602. Institutions in division of mental retardation.
- 80-2603. Supervisor of division of mental retardation.
- 80-2604. Primary function of institutions in division.
- 80-2605. Mental retardation defined.
- 80-2606. Functions of division of mental retardation.
- 80-2607. Establishment of community-centered programs through local agencies and nonprofit corporations.
- 80-2608. Administration—allocation of appropriated moneys—local services to mentally retarded.
- 80-2609. Factors to be considered in approving or rejecting programs.
- 80-2610. Rules and regulations—other powers of director incident to administration of community-centered services.

**80-2601. Establishment of division of mental retardation.** It is hereby established a division of mental retardation within the department of institutions.

**History:** En. Sec. 1, Ch. 111, L. 1971.

**Title of Act**

An act to establish a division of mental retardation within the department of institutions; providing that the Boulder River school and hospital is within the division of mental retardation; providing that the Eastmont training center is within the division of mental retardation; providing that the superintendent of Boulder

River school and hospital is the supervisor of the division of mental retardation; prescribing the location and function of the Boulder River school and hospital; prescribing the function of the superintendent of the Boulder River school and hospital; defining mental retardation; setting forth the functions of the division of mental retardation and providing for effective date. Repealing sections 80-2301 and 80-2302, R. C. M. 1947.

**80-2602. Institutions in division of mental retardation.** The Boulder River school and hospital, located at Boulder, Montana, and the Eastmont training center, located at Glendive, Montana, are in the division of mental retardation of the department of institutions.

**History:** En. Sec. 2, Ch. 111, L. 1971.



**80-2603. Supervisor of division of mental retardation.** The superintendent of the Boulder River school and hospital is responsible for the immediate management and control of the school and in addition, is the supervisor of the division of mental retardation.

**History:** En. Sec. 3, Ch. 111, L. 1971.

**80-2604. Primary function of institutions in division.** The primary function of the Boulder river school and hospital and the Eastmont Training center is the care, treatment, training and education of mentally retarded persons. The "care, treatment, training and education of mentally retarded persons," shall be deemed to include necessary medical treatment.

**History:** En. Sec. 4, Ch. 111, L. 1971.

**80-2605. Mental retardation defined.** As used in this act "mental retardation" is a state of subnormal development of the human organism which results in the mental incapability of the person affected to adapt himself to the daily demands of a social environment.

**History:** En. Sec. 5, Ch. 111, L. 1971.

**80-2606. Functions of division of mental retardation.** The functions of the division of mental retardation of the department of institutions is as follows:

- (1) Take cognizance of persons affected by mental retardation in the state of Montana.
- (2) Initiate preventive mental retardation activities in the state of Montana.
- (3) Make scientific and medical investigations relative to the incidence, cause, prevention, care of mental retardation.
- (4) Collect and disseminate information relating to mental retardation.
- (5) Prepare plans for the development of mental retardation services in the state.
- (6) Establish and conduct clinics in cities and towns in the state for the diagnosis, evaluation and treatment of mental retardation.
- (7) Receive from federal and other agencies, private and public, grants of money for the development of mental retardation services within the state and to use such moneys for the purposes for which they were granted.

**History:** En. Sec. 6, Ch. 111, L. 1971.

**Repealing Clause**

Section 7 of Ch. 111, Laws 1971 read "Sections 80-2301 and 80-2302, R. C. M. 1947, are hereby repealed."

**Effective Date**

Section 8 of Ch. 111, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 1, 1971.

**80-2607. Establishment of community-centered programs through local agencies and nonprofit corporations.** The legislative assembly, in recognition of the wide and varied needs of the mentally retarded persons of this state and of the desirability of meeting these needs on a community

level to the fullest extent possible, and in order to reduce the need for custodial care in state institutions, establishes by this act a community-centered program through interagency co-operation and co-ordination of the local agencies that offer services for mentally retarded persons, and establishes a program to purchase or to provide services through local nonprofit corporations.

**History:** En. Sec. 1, Ch. 165, L. 1971.

**Title of Act**

An act authorizing the department of institutions to purchase services in local communities for mentally-retarded persons; providing for nonprofit corporate boards

to administer such programs locally; providing for the allocation of appropriated moneys; providing for approval of programs; providing for the administration by the department of institutions, and providing an effective date.

**80-2608. Administration — allocation of appropriated moneys — local services to mentally retarded.** (1) The department of institutions is hereby authorized to purchase or to provide services for mentally retarded persons through local nonprofit corporations. The department of institutions shall allocate to such local nonprofit corporations, for the purchase of services for mentally retarded persons, such moneys as shall be appropriated therefor. The corporations shall purchase services from public or private nonprofit sheltered workshops, day-care training centers, and other private and public facilities, universities, colleges, public schools, and preschool nurseries, having approved facilities and offering an approved program. In case such approved facilities and services are not available in the community, the nonprofit corporations may develop, operate and provide such services directly. Payment for such services by the department shall be in an amount not to exceed seventy-five per cent (75%) of the annual cost of the approved community-centered programs. Of the amounts appropriated by the legislature for the purchase of services for mentally retarded persons under the provisions of this section, a sum not to exceed ten per cent (10%) of such amounts appropriated may be used by the office of the director of the department of institutions for the purpose of purchasing such services without regard to matching requirements. In arriving at the cost of services, the department shall set a valuation on the personal services and materials in kind which are contributed to local agencies or institutions from which such services are purchased, but such contributions shall not exceed one-half ( $\frac{1}{2}$ ) of the required community share of the cost of services. Funds allocated to the nonprofit corporations by the department of institutions shall be used only for those services that are not a responsibility of another agency.

(2) For the purposes of allocating moneys under this section, the nonprofit corporations shall submit to the department a proposed budget, which budget shall include proposed expenditures, including services said corporations intend to purchase from various local agencies or institutions that offer services for mentally retarded persons.

(3) Governmental units, including but not limited to counties, municipalities, school districts, or state institutions of higher learning are hereby authorized, at their own expense, to purchase services or to furnish

money, materials and services for mentally retarded persons, through such nonprofit corporations.

**History:** En. Sec. 2, Ch. 165, L. 1971.

**80-2609. Factors to be considered in approving or rejecting programs.**

(1) In approving or rejecting community-centered programs for the purchase of services to mentally retarded persons, the director of the department of institutions shall consider the following factors:

(A) The adequacy and utilization of existing facilities and programs in the community, such as public and private nonprofit sheltered workshops, public school programs, preschool nurseries, and day-care centers, and universities and colleges;

(B) The adequacy of participation by state services, including but not limited to public welfare, public health, rehabilitation and education;

(C) General community interest and participation;

(D) The establishment of programs for the prevention of institutionalization, and habilitation when they do not already exist.

(2) The director shall require the following in the community administration of this program:

(A) Each community-centered program shall be under the control and direction of a board of directors or trustees of a corporation not for profit.

(B) The members of the board of directors or trustees shall be representative of, but not limited to, public, private or voluntary agencies, including political subdivisions of state, which participate in a program for mentally retarded persons in the community.

(C) The community incorporated board shall make application annually to the department of institutions to participate in the state program for mentally retarded persons, and only programs shall be approved which meet the requirements set forth in subsection (1) of this section.

**History:** En. Sec. 3, Ch. 165, L. 1971.

**80-2610. Rules and regulations—other powers of director incident to administration of community-centered services.** The director of the department of institutions shall have power to adopt reasonable rules and regulations to govern the administrative proceedings and procedures necessary to carry out the provisions of this act. Such rules and regulations may be amended or revoked from time to time. The director is also authorized to promulgate standards for and supervise programs supported under this act, and to prescribe the form of reports, budgets, holdings of meetings, investigations and evaluations necessarily incident to the administration of this act.

**History:** En. Sec. 4, Ch. 165, L. 1971.

**Effective Date**

Section 5 of Ch. 165, Laws 1971 pro-

vided the act should be in effect from and after its passage and approval. Approved March 3, 1971.



## TITLE 81—STATE LANDS

### Chapter

1. Department of state lands and investments—general provisions, 81-103.
2. Commissioner of state lands and investments, 81-204, 81-204.1, 81-209, 81-210.
3. Selection—classification, appraisal and exchange of lands, 81-304.
4. Leasing of agricultural lands—grazing lands and city and town lots, 81-407, 81-412, 81-414, 81-415, 81-419, 81-422, 81-422.1, 81-426, 81-428.
5. Coal mining leases and permits, 81-502.
6. Prospecting permits and mining leases, 81-606, 81-613, 81-615.
9. Sale of state lands, 81-908, 81-915.
10. Investments, 81-1003, 81-1007.1.
11. State lands and investments—miscellaneous provisions, 81-1113, 81-1115 to 81-1121.
14. State forests—forester—timber sales—firewardens, 81-1403, 81-1411.
17. Oil and gas on state lands—disposal of, 81-1702.1, 81-1703.
24. Development of state land resources, 81-2401 to 81-2408.

### CHAPTER 1—DEPARTMENT OF STATE LANDS AND INVESTMENTS— GENERAL PROVISIONS

#### Section

81-103. Powers and duties of state board of land commissioners.

#### **81-101. (1805.1) Department of state lands and investments created, etc.**

##### **Cross-References**

Department abolished and functions transferred, sec. 82A-1102(1).

**81-103. (1805.3) Powers and duties of state board of land commissioners.** The state board of land commissioners, consisting of the governor, superintendent of public instruction, secretary of state and attorney general, as provided by the constitution, shall be the governing board of the department of state lands and investments; it shall have and exercise general authority, direction and control over the care, management and disposition of all state lands and the funds arising from the leasing, use, sale and disposition of such lands or otherwise coming under its administration. In the exercise of these powers, the guiding rule and principle shall be that these lands and funds are held in trust for the support of education, and for the attainment of other worthy objects helpful to the well-being of the people of this state; and that it is the duty of the board so to administer this trust as to secure the largest measure of legitimate and reasonable advantage to the state. It is the duty of the board to manage these lands under the multiple-use management concept defined as: The management of all the various resources of the state-owned lands so that they are utilized in that combination best meeting the needs of the people and the beneficiaries of the trust, making the most judicious use of the land for some or all of those resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; that some land will be used for less than all of the resources, and harmonious and co-ordinated man-

agement of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources. The enumeration in this act of specific powers conferred upon the board shall not be so construed as to deprive the board of other powers not enumerated but inherent in the general and discretionary powers conferred by the constitution, and necessary for the proper discharge of its duties; but there can be no such implied powers inconsistent with any part of the constitution, nor shall any inherent powers be assumed to exist which would be inconsistent with any statutory provision or with the general rule and principle herein stated.

**History:** En. Sec. 3, Ch. 60, L. 1927;  
amd. Sec. 1, Ch. 113, L. 1969.

#### **Amendments**

The 1969 amendment inserted the third sentence providing for management of state-owned lands under the multiple-use concept.

#### **Cross-References**

Board functions retained after reorganization, sec. 82A-1505(3).

#### **Leasing State-owned Land**

State board of land commissioners had discretion to award ten-year lease to bidder at 33 1/3 per cent crop share, rather than to another who bid 50 per cent, especially where lessee had farmed the land before and the board was taking less risk. State ex rel. Thompson v. Babcock, 147 M 46, 409 P 2d 808.

## **CHAPTER 2—COMMISSIONER OF STATE LANDS AND INVESTMENTS**

### **Section**

- 81-204. Powers and duties of commissioner—ex officio secretary of the board.
- 81-204.1. Triplicate receipts no longer required of commissioner.
- 81-209. Salary and compensation.
- 81-210. Fees established by commissioner and board.

### **81-201. (1805.5) Appointment of commissioner, etc.**

#### **Cross-References**

Bonds of state officers and employees,  
sec. 6-105 et seq.

Commissioner's office abolished and functions transferred, sec. 82A-1102(2).

**81-204. (1805.8) Powers and duties of commissioner—ex officio secretary of the board.** He shall be ex officio the secretary of the state board of land commissioners, keep the minutes of its proceedings, be the custodian of its seal and records and carry out its orders. Under the direction of the board and all legal provisions governing such business, and through the proper officers, agencies and persons herein provided, he shall have charge of the selecting, exchange, classification, appraisal, leasing, management, sale and other disposition of the state lands and the investment of the funds arising therefrom or otherwise coming under the administration of the department. He shall perform such other duties as the board may direct, the purpose of the department seems to demand, or the statutes require. He shall collect and receive all moneys payable to the state through his office as fees, rentals, royalties, interest, penalties, payments on mortgages or lands purchased from the state or derived from any other source. He shall issue a receipt for each cash payment, or whenever requested by the payer.

**History:** En. Sec. 8, Ch. 60, L. 1927;  
amd. Sec. 2, Ch. 26, L. 1971.

#### **Amendments**

The 1971 amendment eliminated the re-

quirements for triplicate receipts for payments made to the state through the office of the state commissioner of lands and investments, and substituted the last sentence, providing for receipts for cash payment or upon request.

#### Effective Date

Section 3 of Ch. 26, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 16, 1971.

**81-204.1. Triplicate receipts no longer required of commissioner.** In order to ensure a more effective administration of the moneys collected and received by the state through the office of commissioner of state lands and investments as fees, rentals, royalties, interest, penalties, payments on mortgages or lands purchased from the state or derived from any other source the requirements of issuance and distribution of triplicate receipts for moneys so received shall be deleted from the duties of the commissioner of state lands and investments.

**History:** En. Sec. 1, Ch. 26, L. 1971.

#### Title of Act

An act amending section 81-204, R. C. M. 1947, to eliminate the requirements for issuance of triplicate receipts for payments

made to the state through the office of the state commissioner of lands and investments; providing for receipts for cash payment or upon request; and providing for an effective date.

### 81-206. (1805.10) Repealed.

#### Repeal

Section 81-206 (Sec. 10, Ch. 60, L. 1927), relating to the biennial report of the commissioner of state lands and invest-

ments, was repealed by Sec. 44, Ch. 93, Laws 1969. For present law, see secs. 82-4001 and 82-4002.

### 81-208. (1805.13) Oath of office.

#### Cross-References

Bonds of state officers and employees, sec. 6-105 et seq.

**81-209. (1805.14) Salary and compensation.** The salary of the commissioner shall be payable monthly. The salary of the commissioner shall be in such amount as may be specified by the legislative assembly in the appropriation to the commissioner of state land and investments. If the legislative assembly does not specify a maximum salary for the commissioner, it shall be fixed by the state board of land commissioners after approval by the board of examiners. Before approving any salary increase, the board of examiners shall review the salaries of comparable positions in Montana state government, other states, and private industry. The commissioner of state lands and investments shall be paid actual and necessary expenses while engaged in the performance of official duties outside of the state capitol.

**History:** En. Sec. 14, Ch. 60, L. 1927; amd. Sec. 1, Ch. 176, L. 1949; amd. Sec. 1, Ch. 164, L. 1951; amd. Sec. 1, Ch. 119, L. 1953; amd. Sec. 4, Ch. 225, L. 1963; amd. Sec. 8, Ch. 237, L. 1967.

#### Amendments

The 1967 amendment deleted "not more than ten thousand dollars (\$10,000) per annum" before "payable monthly" in the first sentence; and inserted the second, third and fourth sentences.

**81-210. Fees established by commissioner and board.** In order to ensure that fees which are credited to the general fund and which are charged and collected under Title 81, R. C. M. 1947, reflect the current



cost of state government, those fees established by statute are deleted and the commissioner of lands and investments is authorized to establish those fees with the approval of the board of land commissioners.

**History:** En. Sec. 1, Ch. 22, L. 1971.

**Title of Act**

An act amending sections 81-412, 81-419, 81-426, 81-428, 81-502, 81-606, 81-613, 81-615, 81-915, 81-1113, 81-1702.1 and 81-1703, R. C. M. 1947, to eliminate fees estab-

lished by statute and to provide general authority for the commissioner of lands and investments to establish those fees with the approval of the board of land commissioners and providing for an effective date.

CHAPTER 3—SELECTION—CLASSIFICATION, APPRAISAL AND EXCHANGE OF LANDS

Section

81-304. Exchange of lands with United States and counties—validation of prior actions.

**81-304. (1805.19) Exchange of lands with United States and counties—validation of prior actions.** The state board of land commissioners of the state of Montana is hereby authorized and empowered to enter into contracts or agreements with the United States, or any department thereof having jurisdiction for the waiving and relinquishment to the United States of any and all rights of the state of Montana in and to sections sixteen (16) and thirty-six (36) of any township and to any other sections of state lands, provided that the state of Montana shall in lieu of the rights so waived and relinquished receive from the United States other lands of equal or greater value.

The state board of land commissioners of the state of Montana is hereby authorized to accept on behalf of the state of Montana title in fee simple to any land owned by a county in the state of Montana and to convey in exchange therefor state-owned land of approximately the same area and of a value not higher than the land received from the county whenever such exchange will result in consolidating the state-owned lands into more compact bodies.

All contracts and agreements heretofore entered into between the state board of land commissioners and the United States, or any department thereof, waiving and relinquishing the rights of the state of Montana to sections sixteen (16) and thirty-six (36) in any township in this state, and the selection of lands in lieu or [of] those so relinquished by the state are hereby ratified, confirmed and validated. The current user of the land transferred to the United States will continue to enjoy such use of such terms and conditions as may be required by the federal government and in accordance with the Multiple Use Act and the current user on the land received from the United States will continue to utilize the land on the terms and conditions imposed by law or the state board of land commissioners.

**History:** En. Sec. 19, Ch. 60, L. 1927; amd. Sec. 1, Ch. 151, L. 1933; amd. Sec. 1, Ch. 117, L. 1951; amd. Sec. 1, Ch. 257, L. 1965; amd. Sec. 1, Ch. 39, L. 1967.

the last paragraph of this section, is compiled in the United States Code as Tit. 43, secs. 1411 to 1418.

**Amendments**

**Compiler's Notes**

The Multiple Use Act, referred to in

The 1967 amendment deleted the last sentence of the first paragraph, which read

"The amount of state land relinquished under this section in any one year shall not exceed six sections"; and substituted the last sentence of the third paragraph for "The land received from the United States, under this provision, must be lo-

cated in the same county as the relinquished land, and the present lessees or permittees must be recognized for the continuance of their use of the land on such terms as may be required by the respective agencies."

#### CHAPTER 4—LEASING OF AGRICULTURAL LANDS—GRAZING LANDS AND CITY AND TOWN LOTS

##### Section

- 81-407. Who may lease—how much and for what length of time.
- 81-412. Rental, when due—cancellation for nonpayment.
- 81-414. Change in terms of lease.
- 81-415. Conditions of leases—cancellation for violation of rules.
- 81-419. Assignment of leases—preferences—fee.
- 81-422. Cancellation of leases.
- 81-422.1. Purpose of new procedure for cancellation of leases.
- 81-426. Filing with board required—fee.
- 81-428. Proof of termination of lease or pledge to be filed—fee.

#### 81-401. Policy of state as to appraisal and leasing state land.

##### References

State ex rel. Thompson v. Babcock, 147  
M 46, 409 P 2d 808.

#### 81-402. (1805.20) Lease of state lands—crops share rental basis used.

##### References

State ex rel. Thompson v. Babcock, 147  
M 46, 409 P 2d 808.

#### 81-405. (1805.21) Renewal leases—preference right of lessee.

##### References

State ex rel. Thompson v. Babcock, 147  
M 46, 409 P 2d 808.

**81-407. (1805.23) Who may lease—how much and for what length of time.** No persons shall be qualified to lease state lands except one who is the head of a family unless he or she has attained the age of nineteen (19) years. Any such person and any association, company or corporation authorized to hold lands under lease may lease state lands, and there may be included under one lease, tracts of lands embracing more than one (1) section. Any such person, association, company or corporation may hold more than one (1) lease to such lands. No lease to agricultural or grazing lands shall be for a period other than five (5) or ten (10) years. Leases for city and town lots shall not exceed five (5) years. When a lease expires or is canceled the commissioner shall immediately so notify the holder of the lease and all persons who have expressed an interest in leasing the land during, or immediately preceding the term of such expired or canceled lease. If the legislature raises the rentals for state grazing lands during the term of any leases of grazing land hereafter issued which are not issued as a result of competitive bidding the lessee shall, for the years after such increase becomes effective, pay such increase rental and the terms of grazing leases hereafter issued shall so provide.

**History:** En. Sec. 23, Ch. 60, L. 1927; amd. Sec. 2, Ch. 42, L. 1933; amd. Sec. 2, Ch. 65, L. 1939; amd. Sec. 5, Ch. 260, L. 1963; amd. Sec. 18, Ch. 240, L. 1971.

#### Amendments

The 1971 amendment reduced the age specified at the end of the first sentence from 21 to 19 years.

**81-412. (1805.26) Rental, when due—cancellation for nonpayment.** The rental for the first year of the lease and such fee as may be prescribed by the commissioner of state lands and investments with the approval of the state board of land commissioners for issuing the lease shall be paid at or before the time of the execution of the lease; provided, however, that in the case of all leases which take effect on and after October 1 and before the expiration of the coming February, both the rental for the fractional year and for the next full year beginning March 1, shall be paid and collected at the time of issuing the lease; provided, further, when the government of the United States is the lessee of state lands for grazing purposes, the rental shall be payable at the end of each year of said lease. The rental for each succeeding year on leases hereafter issued, with the exception of leases wherein the government of the United States is the lessee, shall become due and payable to the commissioner of state lands and investments on December 15 next preceding the rental year to which the rental applies and if not paid on or before February 1 next following, this nonpayment shall have the effect of canceling the lease from and after February 28 of that year. The commissioner shall notify the lessee by letter addressed to the post-office address given in the lease of such cancellation, and the land shall then be open for lease to other applicants.

**History:** En. Sec. 26, Ch. 60, L. 1927; amd. Sec. 1, Ch. 197, L. 1943; amd. Sec. 2, Ch. 22, L. 1971.

#### Amendments

The 1971 amendment eliminated the fee

of \$2.50 for issuing the lease, and granted general authority for the commissioner of lands and investments to establish the fee with the approval of the board of land commissioners.

**81-414. (1805.28) Change in terms of lease.** Whenever any land is leased for grazing purposes, and the lessee desires to cultivate any part of the land, he shall before doing any such cultivation, make application to the commissioner stating how much land he desires to cultivate, showing the location in the section of such land, send his lease to the commissioner to have the necessary changes made therein, and shall agree that for the remainder of the term of the lease the annual rental shall be at the rate of the original lease until such time as the first crop is harvested from the cultivated portion of the lease. At the time of the first harvest, the lease shall be at the original rate for that portion remaining as grazing land plus the crop share rental for that portion cultivated. In case any person shall cultivate lands leased for grazing purposes, without having first secured the right to do so in the manner herein provided, the lease shall be subject to cancellation by the commissioner subject to the appeal procedure provided in section 81-422, R. C. M. 1947, or the lessee shall be liable for twice the regular agricultural rental on the land so cultivated in addition to the grazing rental



thereof as may be decided by the board. The provisions of this section shall be incorporated in every lease.

**History:** En. Sec. 28, Ch. 60, L. 1927; amd. Sec. 9, Ch. 207, L. 1945; amd. Sec. 1, Ch. 120, L. 1963; amd. Sec. 2, Ch. 27, L. 1971.

#### Amendments

The 1971 amendment inserted "by the commissioner subject to the appeal procedure provided in section 81-422, R. C. M. 1947" in the third sentence.

**81-415. Conditions of leases—cancellation for violation of rules.** It shall be a condition of all leases of agricultural or grazing state lands, (a) that, in the case of agricultural lands, the lessee shall observe the ordinary rules for good management of agricultural lands and shall so handle the leased land with the view of maintaining its productivity and so that wind and soil erosion and noxious weeds are minimized, and that crops are so planted with a view of securing the greatest yields of good quality, and (b) that, in the case of grazing lands, the lessee shall observe the ordinary rules for good range management and shall so manipulate the numbers, class, distribution and season of the range use and the handling, feeding, breeding and marketing of grazing livestock with a view of securing the production of the maximum of livestock and livestock products, consistent with the conservation of the land resources and the perpetuation of its productivity, and to these ends the state land lease shall not be abused by overgrazing.

For the gross violation of any of said rules, the lease involved shall be cancelled by the commissioner, subject to the appeal procedure provided in section 81-422, R. C. M. 1947.

**History:** En. Sec. 10, Ch. 207, L. 1945; amd. Sec. 4, Ch. 254, L. 1947; amd. Sec. 3, Ch. 27, L. 1971.

#### Amendments

The 1971 amendment, in the second para-

graph, provided for mandatory cancellation by the commissioner subject to appeal to the board, rather than discretionary cancellation by the board on recommendation by the commissioner and after notice and opportunity for hearing.

**81-419. (1805.32) Assignment of leases—preferences—fee.** Leases to state lands may be assigned on blanks provided for that purpose by the state board of land commissioners, but no such assignment shall be binding on the state unless the assignment is filed with the commissioner, approved by him and payment made of such fee as may be prescribed by the commissioner of state lands and investments with the approval of the state board of land commissioners. Preference shall always be given to the applicant who wants the land for his own individual use so that the full advantage coming from the leasing and use of such lands may reach those who actually till the soil, and so that they shall not be compelled to pay a higher rental than that due the state. If a lessee subleases state lands on terms less advantageous to the sublessee than the terms given by the state or subleases state lands without filing a copy of the sublease with the commissioner and without receiving his approval, the commissioner shall cancel the lease subject to the appeal procedure provided in section 81-422, R. C. M. 1947.

**History:** En. Sec. 32, Ch. 60, L. 1927; amd. Sec. 1, Ch. 14, L. 1937; amd. Sec. 12, Ch. 207, L. 1945; amd. Sec. 18, Ch. 121, L. 1965; amd. Sec. 3, Ch. 22, L. 1971; amd. Sec. 4, Ch. 27, L. 1971.

**Compiler's Notes**

This section was amended twice in 1971, once by Ch. 22 and once by Ch. 27. Neither amendatory act referred to or incorporated the changes made by the other. Since the two amendments do not appear to conflict, the compiler has made a composite section embodying the amendments by both 1971 acts.

**Amendments**

Chapter 22, Laws of 1971, deleted the assignment fee of \$3.00 and the sublease

fee of \$2.00 and granted general authority for the commissioner of lands and investments to prescribe such fee with the approval of the board of land commissioners.

Chapter 27, Laws of 1971, combined the former last two sentences into the present last sentence and provided for mandatory cancellation by the commissioner, subject to appeal, rather than discretionary cancellation by the board after hearing. For prior version, see parent volume.

**81-422. (1805.36) Cancellation of leases.** The commissioner shall have the power and authority in his discretion to cancel a lease for any of the following causes: For fraud or misrepresentation, or for concealment of facts relating to its issue, which if known would have prevented its issue in the form or to the party issued; for using the land for other purposes than those authorized by the lease, and for any other cause which in the judgment of the commissioner makes the cancellation of the lease necessary in order to do justice to all parties concerned and to protect the interests of the state. Such cancellation shall not entitle the lessee to any refundment of rentals paid or exemption from the payment of any rentals, penalties or other compensation due the state.

When the commissioner cancels a lease pursuant to this section or sections 81-414, 81-415, 81-419, R. C. M. 1947, he shall immediately notify the lessee by certified mail of such cancellation and the reasons therefor. The date of cancellation shall be fifteen (15) days from the date said notice is received by lessee. The lessee shall have fifteen (15) days from and after the receipt of said notice to file a notice of appeal with the commissioner. If notice of appeal is filed, the lease shall remain in effect until the decision of the board has been handed down. Within ten (10) days after notice of appeal has been filed, the commissioner shall set the time and place of hearing and shall so notify the lessee. The board may, after ten (10) days' notice to the lessee, change the time and place of hearing.

Under such rules as it shall provide, the board shall conduct an open hearing to determine whether the lease should be reinstated. The burden of proof shall be on the lessee to show why the lease should not be canceled. All testimony shall be given under oath and reduced to writing. If the lease is reinstated, all of the lessee's rights and privileges thereunder shall be preserved; if not, the land shall be open for releasing as provided by law. If the board finds that the terms of the lease have been violated but, in its judgment, the violation is not serious enough to warrant cancellation, it may reinstate the lease and assess a penalty up to three (3) times the annual rental against the lessee.

**History:** En. Sec. 36, Ch. 60, L. 1927; amd. Sec. 5, Ch. 27, L. 1971.

**Amendments**

The 1971 amendment substituted "com-

missioner" for "board" in two places; added the last two paragraphs on the procedure for cancellation by the commissioner and appeal to the board; and made a minor change in phraseology.

**Effective Date**

Section 6 of Ch. 27, Laws 1971 provided the act should be in effect from and after

its passage and approval. Approved February 16, 1971.

**81-422.1. Purpose of new procedure for cancellation of leases.** In order that the interests of the state are adequately protected and the administration of the state lands is performed in a more efficient manner the leases on state lands shall be subject to cancellation by the commissioner of state lands and investments subject to appeal to the state board of land commissioners.

**History:** En. Sec. 1, Ch. 27, L. 1971.

**Title of Act**

An act to provide for the cancellation of leases on state lands by the commis-

sioner of state lands and investments subject to appeal to the state board of land commissioners, by amending sections 81-414, 81-415, 81-419 and 81-422, R. C. M. 1947; and providing an effective date.

**81-426. Filing with board required—fee.** The pledgee of such lease or the mortgagee of such leasehold interest shall, within thirty (30) days after receipt of said pledge agreement or mortgage, file the same, or a certified copy thereof, in the office of the state board of land commissioners, and shall pay to said board such fee as may be prescribed by the commissioner of state lands and investments with the approval of the state board of land commissioners for the filing thereof.

**History:** En. Sec. 2, Ch. 52, L. 1947; amd. Sec. 21, Ch. 121, L. 1965; amd. Sec. 4, Ch. 22, L. 1971.

fee of \$2.00, and granted general authority for the commissioner of lands and investments to prescribe such fee with the approval of the board of land commissioners.

**Amendments**

The 1971 amendment deleted the filing

**81-428. Proof of termination of lease or pledge to be filed—fee.** The lessee of any grazing or agricultural lease of or leasehold interest in state lands which has been pledged or mortgaged as herein provided shall, within thirty (30) days after payment of the indebtedness secured thereby, or within thirty (30) days after the pledge agreement has been terminated or the leasehold interest has been released from the mortgage, file with the state board of land commissioners due proof of said fact and pay to said board such fee as may be prescribed by the commissioner of state lands and investments with the approval of the state board of land commissioners for said filing.

**History:** En. Sec. 4, Ch. 52, L. 1947; amd. Sec. 20, Ch. 121, L. 1965; amd. Sec. 5, Ch. 22, L. 1971.

fee of \$2.00, and granted general authority for the commissioner of lands and investments to prescribe such fee with the approval of the board of land commissioners.

**Amendments**

The 1971 amendment deleted the filing

## CHAPTER 5—COAL MINING LEASES AND PERMITS

**Section**

81-502. **Maximum term of lease—form—fee.**

**81-502. (1805.39) Maximum term of lease—form—fee.** No coal mining lease shall be issued for a longer term than twenty (20) years, but the



board may establish such rules and regulations for the renewal of a lease at the expiration of the term as it may deem proper and necessary. The board shall prescribe the form of the lease; the fee for issuing the lease and approving the bond hereinafter provided shall be such fee as may be prescribed by the commissioner of state lands and investments with the approval of the state board of land commissioners payable to the commissioner.

The owner of any existing lease issued prior to July 1, 1967, which has a term of ten (10) years or less and which is in good standing, shall have the right to exchange it for a lease of the same lands having a term of not more than twenty (20) years from the commencement date of the original term, upon filing with the board, on or before December 31, 1972, a written application therefor and upon payment of a sum which is the full market value of the exchange as determined by the board, and upon acceptance of the rules and regulations and rents and royalties in effect at the date of the exchange of such leases and upon compliance with such other reasonable requirements as may be imposed by the board.

**History:** En. Sec. 39, Ch. 60, L. 1927; amd. Sec. 5, Ch. 257, L. 1965; amd. Sec. 1, Ch. 121, L. 1967; amd. Sec. 6, Ch. 22, L. 1971; amd. Sec. 1, Ch. 291, L. 1971.

#### Compiler's Notes

This section was amended twice in 1971, once by Ch. 22 and once by Ch. 291. Neither amendatory act mentioned nor included the changes made by the other. Since the changes made by the two acts do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendatory acts.

#### Amendments

The 1967 amendment increased the maximum term for leases on state lands from 10 to 20 years, and increased the fee from \$2 to \$5.

Chapter 22, Laws of 1971, deleted the fee of \$5.00 for issuing the lease and approving the bond, and granted general authority for the commissioner of lands and investments to prescribe such fee with the approval of the board of land commissioners.

Chapter 291, Laws of 1971, added the second paragraph.

## CHAPTER 6—PROSPECTING PERMITS AND MINING LEASES

### Section

- 81-606. Form of applications.
- 81-613. Assignment of leases or permits.
- 81-615. Prospecting permits.

**81-606. Form of applications.** Forms of applications for leases under the provisions of this act shall be prepared by the state board of land commissioners, and each applicant for a mining lease shall execute an application in such form. At the time of the issuance of any mining lease, the mining lessee shall pay to the board such fee as may be prescribed by the commissioner of state lands and investments with the approval of the state board of land commissioners.

**History:** En. Sec. 6, Ch. 148, L. 1937; amd. Sec. 7, Ch. 22, L. 1971.

#### Amendments

The 1971 amendment eliminated provisions for a maximum fee of \$100 and

setting forth criteria for the determination thereof, and instead granted general authority for the commissioner of lands and investments to prescribe such fee with the approval of the board of land commissioners.

**81-613. Assignment of leases or permits.** In case of the assignment of a mining lease or a prospecting permit by the holder thereof, the mining lessee or permittee executing such assignment shall not be relieved of any responsibility for operations under such lease or prospecting permit until the financial and moral responsibility of the assignee shall have been passed upon and approved by the board, nor until there shall be deposited with the board:

(a) and (b) \* \* \* [Same as parent volume.]

(c) Such fee as may be prescribed by the commissioner of state lands and investments with the approval of the state board of land commissioners.

**History:** En. Sec. 13, Ch. 148, L. 1937;  
amd. Sec. 8, Ch. 22, L. 1971.

**Amendments**

The 1971 amendment deleted from sub-

division (c) the fee of \$2.50, and granted general authority for the commissioner of lands and investments to prescribe such fee with the approval of the board of land commissioners.

**81-615. Prospecting permits.** All prospecting permits and all leases outstanding and in good standing at the time of the passage of this act may continue in force until their expiration by their terms, and the rights of the respective permittees or lessees shall be governed by the laws in force when such permits were respectively issued. Prospecting permits without lease may be hereafter issued by the board upon the payment of such fee as may be prescribed by the commissioner of state lands and investments with the approval of the state board of land commissioners at the time of the issuance of such permit and such further fee as may be established by the commissioner of state lands and investments with the approval of the state board of land commissioners at the end of each year during the life thereof, and any such permit shall provide for due diligence in the work of prospecting during the life of such permit. Any such permit shall be limited to prospecting for metalliferous minerals and/or gems and no such permittee shall have the right to remove from any lands or mineral rights covered by such permit any metalliferous minerals or gems except such as may be necessary for the proper testing and sampling of such lands or mineral rights, and except as may be permitted by said board. During the life of any permit in force at the time of the passage of this act, or issued under the provisions of this section, the permittee may apply for a lease of the lands or mineral rights covered by such permit, and if a lease is granted the same shall be in the form and subject to all the terms and conditions specified in this act, as in the case of a mining lease issued under this act. Such permittee shall have the preference right to a lease, upon such terms as the board shall deem just, subject to the terms of this act, and in any event said permittee shall have preference without competitive bidding, and upon the most favorable terms permitted under this act, to forty (40) contiguous acres. If some other person shall make a better bid for a mining lease upon the land covered by such permit, and if the board shall award a mining lease to such better bidder, the board shall also require such mining lessee to pay to the permittee, prior to the issuance of such lease, the full value of all the work the permittee shall have performed

upon the land under his permit in connection with his prospecting and exploration work, and the permittee shall have the right to remove from such land, within thirty (30) days from the date the board shall give such permittee notice of the issuance of such mining lease, or within such further time as the board, upon good cause shown, may allow, any machinery, equipment, improvements, and other property placed thereon by him.

**History:** En. Sec. 15, Ch. 148, L. 1937; amd. Sec. 9, Ch. 22, L. 1971.

#### **Amendments**

The 1971 amendment eliminated statutory fees for issuance of prospecting per-

mits without lease, and granted general authority for the commissioner of lands and investments to prescribe such fees with the approval of the board of land commissioners.

### **CHAPTER 9—SALE OF STATE LANDS**

#### **Section**

81-908. Who may purchase and how much.

81-915. Terms of payment.

**81-908. (1805.71) Who may purchase and how much.** State lands shall be sold only to citizens of the United States or to persons who have declared their intentions to become citizens, or to corporations organized under the laws of this state. No person shall be qualified to purchase state land who has not reached the age of nineteen (19) years. As far as possible to determine the lands shall be sold only to actual settlers or to persons who will improve the same, and not to persons who are likely to hold such lands for speculative purposes intending to resell the same at a higher price without having added anything to their value. No person or corporation shall be entitled to purchase more than one section of state land, and this area shall not include more than one hundred and sixty (160) acres of land susceptible of irrigation. These limitations as to area and irrigableness shall not apply to lands within a federal irrigation project wherein the Congress of the United States of America now or hereafter authorizes water to be furnished to an area exceeding one hundred and sixty (160) irrigable acres.

State lands may be sold to any sovereign state of the United States or to any board of trustees or public corporation or agency of such state created by such state as an agency or political subdivision thereof. Said lands may be purchased in the quantities set forth in this section for use by such state, board of trustees, public corporation, agency, or political subdivision for educational or scientific purposes.

The title to any state lands which have been heretofore purchased by a sovereign state or a board of trustees or public corporation, agency or political subdivision thereof qualified under the provisions of this act is hereby ratified and confirmed.

**History:** En. Sec. 71, Ch. 60, L. 1927; amd. Sec. 1, Ch. 95, L. 1949; amd. Sec. 1, Ch. 10, L. 1959; amd. Sec. 2, Ch. 184, L. 1961; amd. Sec. 19, Ch. 240, L. 1971.

#### **Amendments**

The 1971 amendment reduced the age specified at the end of the second sentence of the first paragraph from 21 to 19 years.

**81-915. (1805.79) Terms of payment.** Every purchaser of state land shall pay on the day of sale such portion of the purchase price as he



may desire but in no case less than ten per centum (10%) of the total sales price, and in case the balance on the purchase price is not an exact multiple of twenty-five dollars (\$25), then he shall pay such additional sum as is necessary to reduce the balance to an even multiple of twenty-five dollars (\$25); he shall also in all cases pay such fee as may be prescribed by the commissioner of state lands and investments with the approval of the state board of land commissioners for each certificate of purchase to be issued to him.

The balance of the purchase price shall draw interest at the rate of five per centum (5%) per annum, payable annually, and the balance of the purchase price itself shall be payable through a period of thirty-three (33) years on the amortization plan, which is hereby defined as being that plan under which part of the principal is required to be paid each time interest becomes due and payable, and under which this part payment on the principal increases at each succeeding installment in the same amount that the interest payment decreases so that the combined amount due on principal and interest on each due date remains the same until the loan or bond is paid in full; provided, however, that the amount of the last installment may vary from the other installments to the extent resulting from disregarding fractional cents in the previous installments; provided, however, that the balance of the purchase price on town and city lots shall be payable on the amortization plan through a period of twenty (20) years; and provided further that the board may at any time fix a shorter period than twenty (20) years for the payment of such balance on town and city lots, and different periods of time may be established for different towns and cities as the best interest of the state may appear to demand.

**History:** En. Sec. 79, Ch. 60, L. 1927; amd. Sec. 1, Ch. 149, L. 1939; amd. Sec. 8, Ch. 257, L. 1965; amd. Sec. 10, Ch. 22, L. 1971.

of \$5.00 for issuance of certificate of purchase, and granted general authority for the commissioner of lands and investments to prescribe such fee with the approval of the board of land commissioners.

#### **Amendments**

The 1971 amendment deleted the fee

### **CHAPTER 10—INVESTMENTS**

#### **Section**

81-1003. Conversion of other forms of bonds into amortization bonds.

81-1007.1. Securities, how paid for.

#### **81-1001. (1805.98) Investment of permanent funds.**

##### **Cross-References**

Board of land commissioners functions transferred, sec. 82A-205(1)(h).

**81-1003. (1805.100) Conversion of other forms of bonds into amortization bonds.** All bonds in which such permanent funds of the state are now invested or in which they hereafter may be invested, whether such bonds are due or not, may be converted into amortization bonds payable through a period of not exceeding twenty (20) years upon resolution duly passed by the board or officers of the political subdivision of the

state through which such bonds were originally issued, if the state board of land commissioners deems such change to amortization bonds to be safe and advantageous to the state and authorizes such change. The interest on such converted bonds shall be such as the state board of land commissioners may fix and determine in each individual case but shall not be less than the rate of interest on the bonds to be converted.

**History:** En. Sec. 100, Ch. 60, L. 1927;      **Amendments**  
amd. Sec. 31, Ch. 234, L. 1971.

The 1971 amendment deleted from the end of the section "and shall in no case exceed six per centum (6%) per annum."

**81-1007.1. (930) Securities, how paid for.** Whenever any securities are purchased with state normal school funds and the same are duly executed and delivered to the president of the state board of land commissioners the board shall direct the state auditor to draw his warrant upon the state treasurer for the amount thereof, specifying the fund upon which, and the person in whose favor the said warrant shall be drawn, whereupon the state auditor shall draw a warrant upon the state treasurer accordingly, which warrant shall be delivered to the president of the state board of land commissioners, and shall be paid by the state treasurer upon the delivery to him of the purchased securities; provided, that the state treasurer shall purchase interest-bearing warrants issued against any fund whenever ordered so to do by the state board of land commissioners.

**History:** En. Sec. 2, Ch. 47, L. 1903;  
re-en. Sec. 790, Rev. C. 1907; amd. Sec. 1,  
Ch. 11, L. 1921; re-en. Sec. 930, R. C. M.  
1921.

**Compiler's Note**

This section formerly was 75-1007 but has been transferred and recodified.

CHAPTER 11—STATE LANDS AND INVESTMENTS—MISCELLANEOUS PROVISIONS

Section

81-1113. Fees.

81-1115. State land equalization payments to counties—list of lands transmitted to county assessor.

81-1116. Computation of state land equalization payment.

81-1117. Form to be completed by county assessor—method of computation shown.

81-1118. County statement on equalization payments examined by commissioner—claim filed with controller.

81-1119. Warrant for state land equalization payments to counties.

81-1120. County distribution of state land equalization payments.

81-1121. School district use of state land equalization proceeds.

**81-1113. (1805.120) Fees.** The commissioner of state lands and investments is hereby authorized and empowered to charge and collect such fees as may be prescribed by him and approved by the state board of land commissioners for the following:

Issuing miner's prospecting permit.

Issuing any other permit.

Issuing any lease with or without bond.

Issuing any certificate of purchase or lieu certificate or converted certificate or purchase contract.

Approving and entering assignment of lease or certificate of purchase.

Deed for right of way easement or other easement.

Patent to any land sold.

Certified copy of any of the instruments above enumerated.

Making township plats showing the state lands therein and giving other information.

Certified copy of any other instrument than those above enumerated or of the records of his office.

Such other services by the commissioner not enumerated in this section.

**History:** En. Sec. 120, Ch. 60, L. 1927; amd. Sec. 19, Ch. 121, L. 1965; amd. Sec. 11, Ch. 22, L. 1971.

**Amendments**

The 1971 amendment eliminated the

statutory schedule of fees and granted general authority for the commissioner of lands and investments to prescribe such fees with the approval of the board of land commissioners; and made a minor change in phraseology in the final clause.

**81-1115. State land equalization payments to counties—list of lands transmitted to county assessor.** The commissioner of state lands and investments for the state of Montana shall, on or before the first Monday of April of every year, prepare and transmit a statement to the county assessor of each county in the state of Montana wherein the state of Montana has real property in excess of six per cent (6%) of the total land area of the county and from which the state of Montana derives grazing, agricultural or forest income. The statement shall contain the total number of acres owned by the state in that county and it shall list the acres separately as grazing, agricultural or forest land.

**History:** En. Sec. 1, Ch. 235, L. 1967.

**Title of Act**

An act providing for reimbursement to counties for loss of revenue because of tax exempt status of state owned land in excess of six per cent (6%) of the

total land area; providing for procedures to effectuate this purpose; prescribing the duties of the commissioner of state lands and investments, county assessors and the state controller; limiting the maximum payments; and providing an effective date.

**81-1116. Computation of state land equalization payment.** The county assessor shall compute the amount of taxes which would be payable on the county assessments of said property as if it were owned by, and taxable to, a taxpayer of such county; provided that, if the land is not classified, the sum to be listed shall be determined by the average tax payment made on like property within the county where said land is situated, not to exceed twelve cents (\$.12) per grazing acre, thirty-five cents (\$.35) per agricultural acre, and twelve cents (\$.12) per forest acre. The average tax may be derived from the most recent biennial report of the state board of equalization. The total figure arrived at by this method shall be called the gross assessment figure. The county exemption factor shall be determined by dividing the percentage the state owned land bears to the total land area of the county into six per cent (6%). This quotient shall be multiplied by the gross assessment figure and the product is called the state exemption figure. The state exemption figure shall be subtracted from the gross assessment to give the state land equalization payment.

**History:** En. Sec. 2, Ch. 235, L. 1967.

**81-1117. Form to be completed by county assessor — method of computation shown.** The commissioner of state lands and investments shall



provide a form to be followed and completed by the county assessor. The county assessor shall, on or before the first day of October, follow the form of the commissioner and make the computations required and shall submit to the commissioner the completed form which shall show the computations and method used in arriving at the state land equalization payment.

**History:** En. Sec. 3, Ch. 235, L. 1967.

**81-1118. County statement on equalization payments examined by commissioner—claim filed with controller.** The commissioner of state lands and investments shall examine the statement returned by the county assessor for accuracy, and in no case shall the state land equalization payment be approved unless the state exemption figure is deducted from the gross assessment figure in the statement. The commissioner of state lands and investments shall, on or before November 1 of each year, prepare and file a claim with the state controller for all counties who are eligible for state land equalization payments, and this claim shall show the amount of money each eligible county will receive.

**History:** En. Sec. 4, Ch. 235, L. 1967.

**81-1119. Warrant for state land equalization payments to counties.** The state controller shall, on or before the first day of December, approve and authorize the issuance of a warrant on the general fund of the state of Montana made payable to the county treasurer of the counties shown on the claim for the payment of the state land equalization payment.

**History:** En. Sec. 5, Ch. 235, L. 1967.

**81-1120. County distribution of state land equalization payments.** The county treasurer shall distribute the money received under this act within their county as hereinafter provided; sixty per cent (60%) of total payment shall be broken down into cents per acre of total state owned land within the county, and apportioned between the elementary school districts in accordance with the amount of state owned land in each elementary district. Forty per cent (40%) shall be allotted to the county road fund.

**History:** En. Sec. 6, Ch. 235, L. 1967.

**81-1121. School district use of state land equalization proceeds.** The money received by any school district under this act shall be designated as district money for the general maintenance and operation of the elementary schools of the district. Such money may be used by the district as all other cash balances are used, in accordance with the provisions of section 75-3618, R.C.M. 1947.

**History:** En. Sec. 7, Ch. 235, L. 1967.

#### **Compiler's Notes**

Section 75-3618, referred to at the end of this section, was repealed by Sec. 496,

Ch. 5, Laws 1971. For current law covering the same general area, see sec. 75-6915.

#### **Effective Date**

Section 8 of Ch. 235, Laws 1967 read "This act is effective January 1, 1968."

## CHAPTER 14—STATE FORESTS—FORESTER—TIMBER SALES—FIREWARDENS

## Section

81-1403. State forester—appointment—compensation—term—assistants.

81-1411. Duties of state forester.

**81-1403. (1830.3) State forester—appointment—compensation—term—assistants.** The governor, by and with the advice and consent of the senate, shall appoint a state forester to have general charge of all the state's forest. He shall be technically trained and experienced in forestry and a graduate of an accredited forestry school, and his salary shall be in such amount as may be specified by the legislative assembly in the appropriation to the state forester, together with the actual, necessary expenses while engaged in outside work in connection with his office and its duties as defined by law and the regulations of the state board of land commissioners and the state board of forestry. If the legislative assembly does not specify the maximum salary of the state forester, his salary shall be fixed by the state board of forestry after approval by the board of examiners. Before approving any salary increase, the board of examiners shall review the salaries of comparable positions in Montana state government, other states, and private industry. Such expenses shall be payable monthly from the state's general fund and/or the appropriations made to those other boards to which he, by law, has been designated secretary or executive officer. His term of office shall be for four (4) years. With the consent and approval of the state board of land commissioners the state forester shall appoint and fix the salaries and expenses of such office help, district foresters, firewardens, cruisers, scalers, slash disposal men, and such other trained and qualified assistants as may be necessary in the administration of the state forests and the forested lands within the state. Provided, however, that consent and approval of such appointments by any board shall be restricted to those appointments made for the purposes of that board as defined by law.

**History:** En. Sec. 3, Ch. 179, L. 1925; amd. Sec. 1, Ch. 161, L. 1949; amd. Sec. 1, Ch. 192, L. 1953; amd. Sec. 1, Ch. 28, L. 1955; amd. Sec. 1, Ch. 94, L. 1957; amd. Sec. 5, Ch. 225, L. 1963; amd. Sec. 39, Ch. 177, L. 1965; amd. Sec. 9, Ch. 237, L. 1967.

**Amendments**

The 1967 amendment substituted "be in such amount as may be specified by the legislative assembly in the appropriation

to the state forester" for "not be more than ten thousand eighty dollars (\$10,080) per annum, at the discretion of the state land board" after "his salary shall" in the second sentence; and inserted the third and fourth sentences.

**Cross-References**

Bonds of state officers and employees, sec. 6-105 et seq.

Forester's position abolished and functions transferred, sec. 82A-1505(3).

**81-1411. (1831) Duties of state forester.** The state forester shall, under the direction and control of the state board of land commissioners, do all the field work in the selection, location, examination, appraisalment, and reappraisalment of state timberlands, whether now belonging to the state or hereafter granted to the state; he shall do all acts required of him to be performed by the said board, and under the direction of said board shall have general charge of the timberlands of the state. He shall act as secretary of the forestry board. He shall, under the supervision of the state board of land commissioners, execute all matters pertaining to for-

estry within the jurisdiction of the state; have charge of all firewardens of the state and direct and aid them in their duties; direct the protection, improvement and condition of state forests; take such action as is authorized by law to prevent and extinguish forest, brush and grass fires; enforce the laws pertaining to forest and brushcover lands, and prosecute for any violation of such laws. He shall report as provided in section 2 [82-4002] of this act. He shall furnish notices, printing in large letters, calling attention to the danger from forest fires, and to the forest fire and trespass laws, and their penalties. Such notices shall be posted by the firewarden in conspicuous places in the several counties of the state, and particularly in brush and forest-covered country, at frequent intervals along streams and lakes frequented by tourists, hunters, and fishermen, at established camping sites, and in every post office in the forested region.

**History:** En. Sec. 10, Ch. 147, L. 1909; amd. Sec. 2, Ch. 118, L. 1911; re-en. Sec. 1831, R. C. M. 1921; amd. Sec. 1, Ch. 218, L. 1955; amd. Sec. 34, Ch. 93, L. 1969.

#### Amendments

The 1969 amendment substituted reporting requirements of section 82-4002 for former provision requiring annual reports in the fourth sentence.

### CHAPTER 17—OIL AND GAS ON STATE LANDS—DISPOSAL OF

#### Section

81-1702.1. Rentals—filing fee—contiguity.

81-1703. Rentals—filing fee—contiguity of land leased—cancellation and renewal of leases.

**81-1702.1. Rentals—filing fee—contiguity.** The annual money rentals to be paid to the state for oil and gas leases hereafter made under the provisions [of] chapter 17 of Title 81, R. C. M. 1947, and acts amendatory thereto, shall be one dollar (\$1) for each acre of land leased, except that in addition to said sum of one dollar (\$1) per acre, the rental for the first year of the lease shall also include any sum in excess of one dollar (\$1) per acre offered and accepted for such first year's rental; provided, however, that such rental shall in no case be less than fifty dollars (\$50) per annum.

Such filing fee as may be prescribed by the commissioner of state lands and investments and approved by the state board of land commissioners for each oil and gas lease issued and a fee in the same amount for each assignment shall be paid to the commissioner of state lands and investments. Such filing fee and the first year's rental, shall be paid before the issue of the lease. The rentals for each subsequent year of the lease shall be due and payable thirty (30) days before the beginning of such subsequent year, and upon failure to make such payment such lease shall terminate.

The lands shall be leased in as compact bodies as the form and areas of the tracts held by the state and offered for lease will permit. No lease shall embrace noncontiguous subdivisions of lands unless such subdivisions shall be within an area comprising not more than one (1) square mile.

In all cases where an oil and gas lease hereafter issued shall be surrendered for cancellation before its expiration, relinquished to the state,



or canceled through proceedings on the part of the state, no new lease on the lands under such lease shall be issued within thirty (30) days from the date of cancellation or relinquishing. This restriction shall not apply however in cases of bona fide assignment.

**History:** En. Sec. 1, Ch. 161, L. 1955; amd. Sec. 12, Ch. 22, L. 1971.

issued from the second paragraph; granted general authority for the commissioner of lands and investments to prescribe such fee with the approval of the board of land commissioners; and made a minor change in style.

#### **Amendments**

The 1971 amendment deleted the filing fee of \$5.00 for each oil and gas lease

### **81-1702.4. Repealed.**

#### **Repeal**

Section 81-1702.4 (L. 1965, Ch. 251, Sec. 2), relating to reservation of royalties to state in oil and gas leases granted by

state, was repealed by Sec. 44, Ch. 93, Laws 1969. For present law, see secs. 82-4001 and 82-4002.

**81-1703. (1882.3) Rentals—filing fee—contiguity of land leased—cancellation and renewal of leases.** The minimum annual money rentals to be paid to the state for oil and gas leases under the provisions of this act shall be seventy-five cents (75¢) for each acre of land leased; provided, however, that such rental shall in no case be less than fifty dollars (\$50) per annum.

Such filing fee as may be prescribed by the commissioner of state lands and investments and approved by the state board of land commissioners for each oil and gas lease issued and a fee in the same amount for each assignment shall be paid to the register of state lands. Such filing fee and the first year's rental shall be paid before the issue of the lease. The rentals for each subsequent year of the lease shall be due and payable thirty (30) days before the beginning of such subsequent year.

The lands shall be leased in as compact bodies as the form and areas of the tracts held by the state and offered for lease will permit. No lease shall embrace noncontiguous subdivisions of lands unless such subdivisions shall be within an area comprising not more than one square mile.

In all cases where an oil and gas lease hereafter issued shall be surrendered for cancellation before its expiration, relinquished to the state, or canceled through proceedings on the part of the state, no new lease on the lands under such lease shall be issued within thirty (30) days from the date of cancellation or relinquishment. This restriction shall not apply however in case of bona fide assignment.

**History:** En. Sec. 3, Ch. 108, L. 1927; amd. Sec. 13, Ch. 22, L. 1971.

to prescribe such fee with the approval of the board of land commissioners.

#### **Amendments**

The 1971 amendment deleted the filing fee of \$2.50 for each oil and gas lease issued, and granted general authority for the commissioner of lands and investments

#### **Effective Date**

Section 14 of Ch. 22, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 10, 1971.

### **81-1709. (1882.9) Repealed.**

#### **Repeal**

Section 81-1709 (Sec. 9, Ch. 108, L. 1927; Sec. 1, Ch. 186, L. 1957), relating

to bonds of lessees of state oil and gas leases, was repealed by Sec. 1, Ch. 164, Laws 1969.

## CHAPTER 24—DEVELOPMENT OF STATE LAND RESOURCES

## Section

- 81-2401. Policy of state.
- 81-2402. Definition of terms.
- 81-2403. Development account in earmarked revenue fund—purposes for which used.
- 81-2404. Restriction on use of income from school and institutional lands.
- 81-2405. Deductions from income for development account—maximum percentage.
- 81-2406. Crediting of deductions from land income.
- 81-2407. Investment of moneys in development account.
- 81-2408. Rules and regulations.

**81-2401. Policy of state.** It is in the best interest and to the great advantage of the state of Montana to seek the highest development of state-owned lands in order that they might be placed to their highest and best use and thereby derive greater revenue for the support of the common schools, the university system and other institutions benefiting therefrom and that in so doing the economy of the local community as well as the state is benefited as a result of the impact of such development.

**History:** En. Sec. 1, Ch. 295, L. 1967.

**Title of Act**

An act relating to lands owned by the state of Montana; creating a resource development account in the earmarked revenue fund for the purpose of developing state-owned lands to increase the

revenue therefrom for the support of the common schools and other institutions and objects for which the lands are held in trust; and authorizing allowances from the income from the lands for the resource development account in the earmarked revenue fund.

**81-2402. Definition of terms.** Unless a different meaning is plainly required by the context, as used in this act:

"Account" means the resource development account in the earmarked revenue fund.

"Department" means the department of state lands and investments.

"Board" means the state board of land commissioners.

"Income" means all proceeds received for the use of state land except revenues required by law to be placed in the Montana trust and legacy fund.

**History:** En. Sec. 2, Ch. 295, L. 1967.

**Cross-References**

Board of land commissioners functions transferred, sec. 82A-205(1)(h).

**81-2403. Development account in earmarked revenue fund—purposes for which used.** A resource development account in the earmarked revenue fund in the state treasury is hereby created to be used solely for the purpose of investing in the improvement and development of state-owned lands acquired by grant or foreclosure in order to increase the revenue to be derived therefrom for common school support and support of the other entities, institutions and objects for which the lands are held in trust. The developments contemplated may include those projects that will develop or conserve the various state land resources including; water, both surface and underground, grazing land, agricultural land and timber land to the benefit of the state of Montana. They may also include expenses necessary to perfect title to lands hereafter claimed by the state of Montana which are suitable for development and other expenses or costs which in the

judgment of the board are desirable or necessary in order to develop or increase the value of the land or the revenue therefrom. Appropriations from the account shall be expended for no other purposes.

**History:** En. Sec. 3, Ch. 295, L. 1967.

**81-2404. Restriction on use of income from school and institutional lands.** Moneys in the account derived from the income from public school lands, university lands, agricultural college lands, scientific school lands, normal school lands, capitol building lands, or institutional lands, shall be expended by the department solely for the purpose of defraying the costs and expenses necessarily incurred in developing public lands of the same trust.

**History:** En. Sec. 4, Ch. 295, L. 1967.

**81-2405. Deductions from income for development account—maximum percentage.** The board shall determine the amount or percentage of income, not to exceed two and one-half per cent ( $2\frac{1}{2}\%$ ) which is necessary to achieve the purposes of this act, and shall provide by rule for deductions of that amount or percentage from the income which is secured from the lands by the department for the trusts benefited by this act.

**History:** En. Sec. 5, Ch. 295, L. 1967.

**81-2406. Crediting of deductions from land income.** All deductions from gross proceeds made in accordance with section 4 [5] [81-2405] of this act shall be paid into the account and the balance of such proceeds not affected hereby shall be paid into the state treasury to the credit of the account otherwise entitled thereto.

**History:** En. Sec. 6, Ch. 295, L. 1967.

#### **Compiler's Notes**

The compiler inserted the bracketed reference to section 5 and the corresponding reference to section 81-2405.

**81-2407. Investment of moneys in development account.** The board shall invest the moneys in the resource development account in safe interest-bearing securities for the benefit of the account.

**History:** En. Sec. 7, Ch. 295, L. 1967.

**81-2408. Rules and regulations.** The board shall adopt such rules as it deems necessary and proper for the purpose of carrying out the provisions of this act.

**History:** En. Sec. 8, Ch. 295, L. 1967.

#### **Separability Clause**

Section 9 of Ch. 295, Laws 1967 read "It is the intent of the legislative assembly that if a part of this act is invalid,

all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."





## TITLE 82—STATE OFFICERS, BOARDS AND DEPARTMENTS

### Chapter

1. State controller, 82-109, 82-109.2 to 82-111.
3. Athletic commission, state, 82-302.
4. Attorney general, 82-414 to 82-420.
5. Clerk of supreme court, 82-503.
8. Entomologist, state—duties as to agriculture, 82-804.1, 82-804.2, 82-804.4.
10. Examiner, state, 82-1002, 82-1005, 82-1007 to 82-1009, 82-1011.
11. Examiners, state board of—printing contract and supplies, 82-1149.
12. Fire marshal, state, 82-1201, 82-1202, 82-1202.1, 82-1202.2, 82-1208, 82-1209, 82-1211, 82-1218, 82-1231.
13. Governor—powers—records—secretary, 82-1311 to 82-1314.
15. Hail insurance, state board of, 82-1516, 82-1519.
19. Purchasing department and agent, 82-1910, 82-1914, 82-1916 to 82-1918, 82-1924 to 82-1925.1, 82-1926 to 82-1928.
20. Reporters of decisions of supreme court—publication and distribution of reports, 82-2002.
27. Co-ordinator of Indian affairs, 82-2701 to 82-2703.
30. Natural resources and development council, 82-3001 to 82-3003.
32. State records, 82-3207 to 82-3209.
33. Department of administration, 82-3303, 82-3306, 82-3316, 82-3317, 82-3323 to 82-3331.
35. Commission on problems of aging, 82-3501 to 82-3505.
36. Montana arts council, 82-3601 to 82-3609.
37. Planning and Economic Development Act, 82-3701 to 82-3707, 82-3709.
38. Post-enemy-attack continuity in government, 82-3801 to 82-3809.
39. Teletypewriter communications system for law enforcement, 82-3901 to 82-3906.
40. Annual reports to governor, 82-4001, 82-4002.
41. Public contractor's deposits for withdrawal of retained payments, 82-4101 to 82-4104.
42. Administrative Procedure Act, 82-4201 to 82-4225.

### CHAPTER 1—STATE CONTROLLER

#### Section

- 82-109. Duties of controller—expenditure control.
- 82-109.2. Pre-audit of liquidated or settled claims—transmittal of unliquidated or unsettled claims.
- 82-110. Controller to prescribe uniform accounting system.
- 82-111. Assistance of controller to legislative assembly—reports of controller.

### 82-106. State controller—appointment—qualifications.

#### Cross-References

Office abolished and functions transferred, sec. 82A-202(2).

### 82-107. Controller's oath of office.

#### Cross-References

Bonds of state officers and employees, sec. 6-105 et seq.

**82-109. Duties of controller—expenditure control.** (a) \* \* \* [Same as parent volume.]

(b) It shall be the duty of the controller to apply expenditures against nongeneral fund moneys wherever possible before using the general fund appropriations.

(c) \* \* \* [Same as parent volume.]

(d) Notwithstanding any other provision of law, the state controller may establish procedures necessary to ensure that expenditures are made and accounted for in accordance with the budget plan authorized by the legislative assembly in the enactment of the appropriations, including, but not limited to, procedures to accrue expenses incurred in one fiscal period and paid in a subsequent fiscal period, and procedures for the issuance of purchase orders or contracts to be paid from succeeding year appropriations that will become available within three (3) months from the date of the issuance of the purchase order or contract.

**History:** En. Sec. 4, Ch. 194, L. 1951; amd. Sec. 1, Ch. 101, L. 1953; amd. Sec. 8, Ch. 158, L. 1959; amd. Sec. 3, Ch. 267, L. 1971.

#### Amendments

The 1971 amendment inserted "nongen-

eral fund moneys" in subsection (b); and added subsection (d).

#### Cross-References

Governor-elect, duties of state controller, secs. 82-1312, 82-1313 and 82-1314.

**82-109.2. Pre-audit of liquidated or settled claims—transmittal of unliquidated or unsettled claims.** The state controller may pre-audit liquidated or settled claims against the state, including claims by transportation companies arising from state transportation requests, ascertaining that (1) the proper authorizing signature is present, (2) the claim and supporting documents are mathematically and clerically accurate, (3) the proper appropriation and fund is charged and (4) the expenditure is not illegal. The state controller shall not make any charge against any appropriation unless the balance of the appropriation is available and adequate. If no appropriation is available for the payment of a settled or liquidated claim, the controller shall audit it and, if it is a valid claim, transmit it to the governor through the office of director of the budget for presentation to the legislative assembly.

Any unliquidated or unsettled claims submitted to the state controller shall be transmitted to the state board of examiners to be processed as provided by law.

**History:** En. Sec. 2, Ch. 97, L. 1961; amd. Sec. 29, Ch. 271, L. 1963; amd. Sec. 1, Ch. 91, L. 1969.

#### Amendments

The 1969 amendment, in the first sentence, substituted "controller may pre-audit liquidated or settled claims" for "controller shall pre-audit all liquidated or settled claims"; in item (3), deleted "and that the appropriation is available and adequate" after "fund is charged"; and substituted the present second sen-

tence for the former second and third sentences, reading, "If the volume of claims will not permit such audit of each claim, item (2) above may be accomplished on a spot-check basis. The pre-auditing conducted by the state controller shall be concerned only with the form and accuracy of the claim and supporting documents, and the availability of the funds and in no event shall the state controller interpose his judgment regarding the wisdom or expediency of any item or items of expenditure."

**82-110. Controller to prescribe uniform accounting system.** (a) The controller shall prescribe and install uniform accounting and reporting for the several state boards, bureaus, departments, commissions and institutions showing the receipt, use and disposition of all public money and property, and shall develop plans for improvements and economies in the organization and operation thereof which shall be submitted to the respec-



tive heads of such boards, bureaus, departments, commissions and institutions. Copies of all such plans shall be delivered to the governor and additional copies shall be retained in the office of the controller for inspection by the members of the legislative assembly.

(b) The controller shall have the power and it shall be his duty to examine into all financial affairs of every state board, commission, bureau, department and institution for the purpose of developing plans for improvements and economies in the organization and operation thereof, and for the purpose of enabling him to properly perform any of the duties imposed upon him by this act.

(c) The controller may establish procedures for canceling and writing off accounts receivable carried on the books of various state agencies which are uncollectible or the continued pursuance of the collection thereof would cost the state more than the amount collected. Such procedures shall include the reporting of such canceling and writing off of accounts receivable to the next session of the legislative assembly.

(d) When not specifically provided by law, the controller may establish a minimum amount which shall be paid on a refund due from the various agencies of the state, and no refund amounting to less than the established minimum shall be paid except upon the specific written request of the person entitled to receive the refund.

(e) Notwithstanding any other provision of state law, when it is determined to be in the best financial interest of the state, the controller shall have the authority to require any moneys received or collected by any agency of the state to be immediately deposited to the credit of the state treasurer.

(f) All officers, employees and other persons connected with the fiscal affairs of any state office, board, bureau, department, commission or institution must afford all reasonable facilities for the examination of accounts and investigations provided for in this act, and must make reports, returns and exhibits relating to such fiscal matters to the controller in such form as he shall prescribe; and the controller shall have and keep in his office the names of and amount of salary paid to each person regularly employed by the state of Montana and every agency thereof.

(g) If any officer or employee of the state or any agency thereof shall refuse or neglect to comply with subdivision (f) of this section, the salary of such officer or employee shall, on request of the controller to the proper official, be withheld until such recreant officer or employee shall comply therewith and the controller certifies approval to the disbursing officer.

**History:** En. Sec. 6, Ch. 194, L. 1951; amd. Sec. 9, Ch. 158, L. 1959; amd. Sec. 18, Ch. 249, L. 1967; amd. Sec. 4, Ch. 268, L. 1971.

#### Amendments

The 1967 amendment deleted "acting with the state examiner" after "controller" near the beginning of subsection (a) and deleted "in addition to those enumerated in section 82-102 hereof" after "institutions"; and deleted "shall receive

copies of all audits and reports of the state examiner relating to all state departments, boards, bureaus, institutions and agencies and, without duplicating work done in preparing such audits and reports" after "The controller" near the beginning of subsection (b).

The 1971 amendment inserted new subsections (c), (d) and (e); redesignated former subsections (c) and (d) as subsections (f) and (g); and changed internal references to correspond.

**82-111. Assistance of controller to legislative assembly—reports of controller.** It shall be the duty of the controller to make all such reports and to submit all such information and data as the legislative assembly may request, and he shall, when requested so to do, attend all meetings of the appropriations committee of the house of representatives and of the finance and claims committee of the senate, and the controller shall, during the consideration of appropriation measures by the house and senate, devote so much of his time thereto as may be required by the above-named committees, under the direction of the respective chairmen of said committees.

**History:** En. Sec. 11, Ch. 194, L. 1951;  
amd. Sec. 35, Ch. 93, L. 1969.

#### **Amendments**

The 1969 amendment deleted the subsection designation "(a)" in the first paragraph and deleted former subsection (b). For previous text, see parent volume.

### **CHAPTER 3—ATHLETIC COMMISSION, STATE**

#### **Section**

**82-302. Secretary of commission—duties—limitation on salary and expense—report of commission to governor.**

**82-301. (4551) State athletic commission, etc.**

#### **Cross-References**

Commission renamed and continued in

department of professional and occupational licensing, sec. 82A-1602(4).

**82-302. (4552) Secretary of commission—duties—limitation on salary and expense—report of commission to governor.** The commission shall appoint, and at its pleasure remove, a secretary to the commission, whose duty it shall be to keep a full and true record of all its proceedings, preserve at its general office all its books, documents and papers, prepare for service such notices and other papers as may be required of him by the commission and to perform such other duties as the commission may prescribe; and he may under the direction of the commission issue subpoenas for the attendance of witnesses before the commission and may, under direction of the commission, administer oaths in all matters pertaining to the duties of his office or connected with the administration of the affairs of the commission. The necessary traveling and other necessary expenses, including the salary of the secretary not exceeding twenty-five dollars (\$25) per month, which shall be determined by the commission, shall be paid monthly by the state treasurer on warrant properly drawn out of the proceeds of the tax to be collected as herein provided. The commission shall report as provided in section 2 [82-4002] of this act.

**History:** En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4552, R. C. M. 1921; amd. Sec. 2, Ch. 103, L. 1927; amd. Sec. 36, Ch. 93, L. 1969.

#### **Amendments**

The 1969 amendment substituted the reporting requirements of section 82-4002 for former provision requiring annual reports.

## CHAPTER 4—ATTORNEY GENERAL

## Section

- 82-414. Division of criminal investigation created—appointment and qualifications.  
 82-415. Definition of term.  
 82-416. Powers and duties of agents.  
 82-417. Access to files of division of criminal investigation.  
 82-418. Division of criminal investigation covered by retirement program.  
 82-419. State agencies to co-operate with division of criminal investigation.  
 82-420. Location of division of criminal investigation.

**82-401. (199) General duties.****Cross-References**

Attorney general as head of department

of law enforcement and public safety, sec.  
 82A-1201.

**82-414. Division of criminal investigation created—appointment and qualifications.** (1) There is hereby created a permanent division of criminal investigation within the office of the state attorney general.

(2) The attorney general shall appoint such agents and other necessary assisting personnel and fix their compensation.

(3) Each agent shall be a person qualified by experience, training and high professional competence in criminal investigation. Qualifications shall be equal to those of similarly assigned federal bureau of investigation personnel.

**History:** En. Sec. 1, Ch. 176, L. 1967;  
 amd. Sec. 1, Ch. 219, L. 1971.

**Title of Act**

An act creating the position of criminal investigator within the department of the attorney general and defining the duties of said position.

vision of criminal investigation" for "position of criminal investigator" in subsection (1); substituted "such agents" for "the investigator" in subsection (2); and substituted "Each agent" for "The investigator" at the beginning of subsection (3).

**Amendments**

The 1971 amendment substituted "di-

**Cross-References**

Position abolished and functions transferred, sec. 82A-1202(2).

**82-415. Definition of term.** As used in this act:

"Agent" means a person appointed to the division of criminal investigation within the attorney general's office.

**History:** En. Sec. 2, Ch. 176, L. 1967;  
 amd. Sec. 2, Ch. 219, L. 1971.

**Amendments**

The 1971 amendment substituted the

definition of "agent" for a paragraph defining "investigator" as "the person appointed to the position of criminal investigator within the attorney general's office."

**82-416. Powers and duties of agents.** An agent shall have the power and duty to:

(1) Assist city, county, state and federal law enforcement agencies at their request by providing expert and immediate aid in investigation and solution of felonies committed in the state;

(2) Assist various law enforcement schools held in the state for law officers when requested;

(3) Co-operate with the bureau of criminal identification and investigation;



(4) Act as a peace officer as defined in the laws of Montana when engaged in assisting or acting under the direction of city, county, state and federal law agencies as provided in this section.

**History:** En. Sec. 3, Ch. 176, L. 1967; amd. Sec. 3, Ch. 219, L. 1971.

agent" for "The investigator" at the beginning of the section; and added subdivision (4).

**Amendments**

The 1971 amendment substituted "An

**82-417. Access to files of division of criminal investigation.** A person with a known criminal record shall not be permitted access to the files of the division of criminal investigation, nor shall anyone else, without the order of a district judge or a supreme court justice.

**History:** En. Sec. 4, Ch. 176, L. 1967; amd. Sec. 4, Ch. 219, L. 1971.

**Amendments**

The 1971 amendment substituted "division of criminal investigation" for "investigator."

**82-418. Division of criminal investigation covered by retirement program.** All agents and assisting personnel shall be covered by the public employees' retirement system.

**History:** En. Sec. 5, Ch. 176, L. 1967; amd. Sec. 5, Ch. 219, L. 1971.

**Amendments**

The 1971 amendment substituted "All agents" for "The investigator" at the beginning of the section.

**82-419. State agencies to co-operate with division of criminal investigation.** All state departments and agencies shall co-operate with such agents and assisting personnel in providing transportation, educational and laboratory facilities for their use when so requested.

**History:** En. Sec. 6, Ch. 176, L. 1967; amd. Sec. 6, Ch. 219, L. 1971.

agents and assisting personnel" for "the investigator"; and made a minor change in phraseology.

**Amendments**

The 1971 amendment substituted "such

**82-420. Location of division of criminal investigation.** The location of the division of criminal investigation and its personnel shall be at the discretion of the state attorney general.

**History:** En. Sec. 7, Ch. 176, L. 1967; amd. Sec. 7, Ch. 219, L. 1971.

**Amendments**

The 1971 amendment substituted this section for a provision requiring that the office of the criminal investigator be located at Deer Lodge.

**Effective Date**

Section 8 of Ch. 219, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 4, 1971.

## CHAPTER 5—CLERK OF SUPREME COURT

### Section

82-503. Fees.

**82-503. (372) Fees.** He must collect in advance the following fees: For filing the transcript on appeal, in each civil case appealed to the supreme

court, twenty dollars (\$20) payable by the appellant, and ten dollars (\$10) payable by respondent, at the time of his appearance, in full for all services rendered in each case, up to the remittitur to the court below; for filing petition for any writ, twenty dollars (\$20), in full for all services rendered in each cause; for certificate of admission as attorney and counselor, five dollars (\$5); for making transcripts, copies of papers or record, fifteen cents (\$.15) per folio; for comparing any document requiring a certificate, five cents (\$.05) per folio; for each certificate under seal, one dollar (\$1).

Three-fourths ( $\frac{3}{4}$ ) of all fees collected by him must be paid into the state treasury, which shall be credited to the credit of the general fund, one-fourth ( $\frac{1}{4}$ ) of all fees collected by him shall be paid to the secretary of the public employees' retirement system board to be credited to the judges' retirement fund.

**History:** En. Sec. 872, Pol. C. 1895; re-en. Sec. 301, Rev. C. 1907; re-en. Sec. 372, R. C. M. 1921; amd. Sec. 1, Ch. 156, L. 1939; amd. Sec. 1, Ch. 112, L. 1943; amd. Sec. 87, Ch. 147, L. 1963; amd. Sec. 3, Ch. 218, L. 1967.

#### Amendments

The 1967 amendment increased filing fees on appeals to the supreme court, payable by the appellant, from \$10 to \$20, and by the respondent, from \$5 to \$10 and increased fees for filing petition for any writ from \$10 to \$20 in the first paragraph; added "Three-fourths ( $\frac{3}{4}$ ) of" at the beginning of the second paragraph; added the passage beginning "and one-fourth ( $\frac{1}{4}$ ) of all fees collected" at the end of the second paragraph; and made minor changes in style.

#### Compiler's Notes

The last paragraph of section 3, Chapter 218, Laws 1967, read: "This act shall be in full force and effect from and after its passage and approval." The act was approved March 1, 1967.

### CHAPTER 6—DEPUTIES—APPOINTMENT BY CERTAIN OFFICERS— CLERKSHIP OF CONSOLIDATED BOARDS

#### 82-601. (122) Deputy state officers.

##### Cross-References

Bonds of state officers and employees, sec. 6-105 et seq.

### CHAPTER 8—ENTOMOLOGIST, STATE—DUTIES AS TO AGRICULTURE

#### Section

- 82-804.1. State entomologist of Montana.
- 82-804.2. Duties of the state entomologist.
- 82-804.4. Expenses.

#### 82-801 to 82-804. (913 to 916) Repealed.

##### Repeal

These sections (Secs. 1 to 4, Ch. 59, L. 1903; Secs. 1 to 4, Ch. 103, L. 1907; Sec.

1, Ch. 114, L. 1925), relating to the state entomologist, were repealed by Sec. 5, Ch. 75, Laws 1967.

**82-804.1. State entomologist of Montana.** The state entomologist of Montana shall be an entomologist who is a member of the resident faculty of the Montana agricultural experiment station at Bozeman, Montana, and who shall be appointed by the dean of the college of agriculture of Montana state university.

## 82-804.2 STATE OFFICERS, BOARDS AND DEPARTMENTS

**History:** En. Sec. 1, Ch. 75, L. 1967. for his office; and repealing sections 82-801, 82-802, 82-803 and 82-804, R. C. M. 1947.

### **Title of Act**

An act providing for the appointment, qualifications and duties of the state entomologist; providing that expenses be paid out of the legislative appropriation

### **Cross-References**

Position abolished and functions transferred, sec. 82A-502(1).

**82-804.2. Duties of the state entomologist.** It shall be the duty of the state entomologist to conduct investigations pertaining to insects and other arthropods which affect or may affect plants and animals. When an injurious infestation of an insect or other arthropod occurs in any part of the state, it shall be his duty, so far as it is possible without conflicting with his other duties, to go to the scene of the infestation or send a suitably qualified assistant. The state entomologist or said assistant shall determine the extent and seriousness of the infestation and make public the best remedies to be employed.

**History:** En. Sec. 2, Ch. 75, L. 1967.

## **82-804.3. Repealed.**

### **Repeal**

Section 82-804.3 (Sec. 3, Ch. 75, L. 1967), relating to biennial report of the

state entomologist, was repealed by Sec. 44, Ch. 93, Laws 1969. For present law, see secs. 82-4001 and 82-4002.

**82-804.4. Expenses.** The state entomologist shall receive no compensation for his services other than that which he may receive from the Montana agricultural experiment station and Montana state university, but such office and laboratory expenses and such salaries of necessary assistants, together with such travel and per diem expenses for himself and assistants incurred in the course of performing the duties prescribed by this act, shall be paid out of sums appropriated from time to time by the legislative assembly of the state of Montana to the state entomologist. Payment shall be made on claims certified by the state entomologist and presented to the appropriate state agency.

**History:** En. Sec. 4, Ch. 75, L. 1967.

### **Repealing Clause**

Section 5 of Ch. 75, Laws 1967 read "Sections 82-801, 82-802, 82-803 and 82-804, R. C. M. 1947, are repealed."

### **Effective Date**

Section 6 of Ch. 75, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 20, 1967.

## **82-806. Powers and duties of state apiarist.**

### **Cross-References**

Functions of apiarist transferred to department of agriculture, sec. 82A-303(2).

Position abolished and functions transferred to co-operative extension service, sec. 82A-502(2).

## **CHAPTER 10—EXAMINER, STATE**

### **Section**

82-1002. Duties of state examiner.

82-1005. Power to examine books and papers.

82-1007. Access to accounts of public officers—actions to compel.

82-1008. Examination of accounts of cities, towns and certain school districts, and fire districts.

82-1009. Laws applicable to such examinations.

82-1011. Salary and expenses.



**82-1002. (210) Duties of state examiner.** The duties of the state examiner and his assistants are:

1. To examine at least once in each year the books and accounts of the state treasurer, clerk of the supreme court, county treasurers, county clerks, district court clerks, county auditors, sheriffs, public administrators, boards of county commissioners of each county, and all other county and municipal officers and boards.

The costs incurred by the state examiner and his assistants in conducting the examinations of counties, cities and towns shall be reimbursed to the state at the rate of eighty dollars (\$80) per day for each person engaged in an examination, and the money shall be paid at the conclusion of the examination to the state treasurer who shall credit such payment to the general fund of the state.

2. To prescribe the general methods and details of accounting for the receipt and disbursement of all moneys belonging to the counties, cities, towns, or school districts, and to establish in all such offices such general methods and details of accounting as are required by law or are prescribed by the state examiner, and all county, city, town or school district officers are hereby compelled to conform therewith.

3. The state examiner, after examination of the affairs of the state treasurer and clerk of the supreme court, must make report to the governor and to the attorney general of the result of such examination, within sixty days thereafter; and if any violation of law or nonperformance of duty is found on the part of any such officer, they must be proceeded against by the attorney general as provided by law.

4. The state examiner, or his assistants, after the examination of the affairs of any county, city or town officers, must make report of such examination to the board of county commissioners, the city or town councils and to the county, city or town attorney of such county, city or town within sixty (60) days after such examination; and if any violation of law or nonperformance of duty is found on the part of any officer or board, such officer or board must be proceeded against by the attorney general, county, or city or town attorney as provided by law.

5. The state examiner must report as provided in section 2 [82-4002] of this act.

6. It shall be the duty of the county attorneys of the various counties of the state of Montana and the attorneys of the various cities and towns of the state of Montana to make report to the state examiner within thirty days after receiving from the state examiner the report of any examination of any county, city or town, as to what proceedings he has instituted or is intending to institute relating to violations of law and nonperformance of duty, as set forth in the report of the state examiner.

7. If any county or city attorney refuses or neglects to notify the state examiner within thirty days after receiving the report of any examination of any county, city or town, as to what proceedings he has instituted or is about to institute against any officer for violations of law or nonperformance of duty, as evidenced by matters of record, and as set forth in the state examiners report; the state examiner may withhold the salary of such county or city attorney by filing notice with the proper

officials, until proper and satisfactory explanation has been made to the state examiner for such nonperformance of duty, provided further, that should the county or city attorney fail or refuse to prosecute such cases, the state examiner may employ an attorney to prosecute such case at the expense of the county, city or town.

8. When in the judgment of the state examiner it shall be deemed necessary, special examinations may be made of any county, city, town, school district, irrigation district, high school, or any other county or municipal office, board or commission, whether temporary or permanent, however created, and for whatever purpose, having the control, management, collection or disbursement of any public money of any character or description. Costs for such special examination shall be reimbursed to the state at the conclusion of such examination at the rate of eighty dollars (\$80) a day for each person engaged in the examination and shall be paid to the state treasurer for the credit of the general fund.

**History:** Ap. p. Sec. 491, Pol. C. 1895; amd. Sec. 1, p. 105, L. 1897; amd. Sec. 491, Ch. 100, L. 1903; re-en. Sec. 209, Rev. C. 1907; re-en. Sec. 210, R. C. M. 1921; amd. Sec. 1, Ch. 78, L. 1923; amd. Sec. 14, Ch. 249, L. 1967; amd. Sec. 37, Ch. 93, L. 1969; amd. Sec. 2, Ch. 256, L. 1971; amd. Sec. 1, Ch. 388, L. 1971.

#### Compiler's Notes

This section was amended twice in 1971, once by Ch. 256 and once by Ch. 388. Neither amendatory act mentioned nor incorporated the changes made by the other. Since the changes made by the two acts do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendatory acts.

#### Amendments

The 1967 amendment, in subdivision 1, deleted "state auditor, secretary of state" after "treasurer"; deleted "state game warden, register of state land office, and all other state officers having the collection or handling of state money" after "supreme court"; inserted "county and municipal" after "all other"; deleted "and" before "boards"; and added "and institutions" after "boards"; in subdivision 2, deleted "and the educational, charitable, penal, and reformatory institutions of the state of Montana" after "school districts"; deleted "and officers of educational, charitable, penal and reformatory institutions of the state of Montana" after "district officers"; deleted old subdivision 3, which read, "To examine at least once each year the books and accounts of the treasurer and secretary of each and all of the educational, charitable, penal, and reformatory institutions of the state of Montana, and to examine into the financial affairs and conditions of each and

all of said institutions"; redesignated old subdivisions 4 through 10 as new subdivisions 3 through 9; in new subdivision 5, now subdivision 3, substituted "officer or" for "state officer, board, or institution" after "affairs of any"; and at the end new subdivision 7, now subdivision 5, deleted "but such report must not be printed unless the printing thereof be ordered by the state board of examiners."

The 1969 amendment substituted reporting requirements of section 82-4002 for former provisions of subdivision 7, now subdivision 5, requiring annual reports.

Chapter 256, Laws of 1971, added the second paragraph to subdivision 1; added a subdivision 10 which the compiler has redesignated as subdivision 8; and made minor changes in punctuation and style.

Chapter 388, Laws of 1971, deleted "county assessors" from the first paragraph of subdivision 1; deleted "and institutions" from the end of the first paragraph of subdivision 1; deleted former subdivisions 3 and 4, which were subdivisions 4 and 5 in the parent volume; redesignated former subdivisions 5 to 9, inclusive, as subdivisions 3 to 7, inclusive; substituted "the state treasurer and clerk of the Supreme Court" for "any officer or board of county commissioners" near the beginning of subdivision 3; deleted "or board" following "officer" in the latter part of subdivision 3; deleted "or county attorney" following "attorney general" near the end of subdivision 3; inserted references to cities and towns, city and town officers, city and town councils and city and town attorneys in subdivision 4; changed the reporting time required in subdivision 4 from thirty to sixty days after examination; inserted "attorney general" near the end of subdivision 4; and made minor changes in phraseology and punctuation.

**Cross-References**

Examiner's functions transferred, sec.  
82A-903(3)(a).

**82-1005. (212) Power to examine books and papers.** The state examiner or his assistant has power to examine any books, papers, accounts, and documents in the office or possession of any county or banking or other institution referred to in this act, and to send for persons or papers and to examine under oath any and all persons concerning the same.

**History:** Ap. p. Sec. 494, Pol. C. 1895; amd. Sec. 493, p. 107, L. 1897; amd. Sec. 493, Ch. 100, L. 1903; re-en. Sec. 211, Rev. C. 1907; re-en. Sec. 212, R. C. M. 1921; amd. Sec. 15, Ch. 249, L. 1967.

**Amendments**

The 1967 amendment deleted "or state officer" after "any county."

**82-1007. (214) Access to accounts of public officers—actions to compel.**  
(1). \* \* \* [Same as parent volume.]

(2) Any county, city, town or school district officer who shall refuse to accord the state examiner access during an examination of such officer's accounts, to his cash, bank accounts, or any of the papers, vouchers or records of his office, or if the state examiner, after counting the cash and verifying the bank accounts of such officer shall find that a shortage exists in the accounts of said officer, the state examiner shall forthwith file a verified preliminary report showing the refusal of such officer to accord to him access to the examination of such accounts, cash, bank accounts, papers, vouchers or records, or the existence of such shortage, and the amount or approximate amount thereof with the board of county commissioners of the proper county if the officer be a county or school district officer, and with the city or town council if the officer be a city or town officer; upon the filing of such verified statement, such officer shall immediately be suspended from the duties and emoluments of his office, and the board of county commissioners of the county in case of county or school district officers, and the city or town council in case of a city or town officer, shall appoint some qualified person to such office, pending the completion of such examination.

(3) Upon the completion of the audit or examination of the accounts of such officer by the state examiner, if a shortage shall be found to have existed in the accounts of such officer on the date of the commencement of such examination, the state examiner shall file, in the office of the board of county commissioners of the proper county in the case of a county or school district officer, and with the city or town council in the case of a city or town officer, a verified final report of the examination or audit, showing such shortage, whereupon the right of such officer to such office shall be forfeited, and such office shall thereupon become vacant as of the date of the suspension of such officer as hereinabove provided, and the person appointed to such office upon the suspension of said officer shall hold said office until the election and qualification of his successor, as provided by law.

(4). \* \* \* [Same as parent volume.]

**History:** En. Sec. 1, Ch. 84, L. 1915; L. Ch. 179, L. 1939; amd. Sec. 16, Ch. 249, re-en. Sec. 214, R. C. M. 1921; amd. Sec. 1, L. 1967.



**Amendments**

The 1967 amendment deleted "state" after "Any" at the beginning of subsection (2); deleted "with the secretary of state if such officer shall be a state officer" after "amount thereof"; deleted "and

the governor, in the case of a state officer" after "of his office"; and, in subdivision (3), deleted "the secretary of state in case of a state officer, and" after "in the office of."

**82-1008. (215) Examination of accounts of cities, towns and certain school districts, and fire districts.** The state examiner in addition to the duties now imposed upon his office, shall have the power and authority and it shall be his duty, to make at least one (1) examination each year of the books and accounts of all incorporated cities and towns.

The state examiner shall have the power and authority, and it shall be his duty, to make at least one (1) examination during each fiscal year of the books and accounts of all school districts of the first and second class and of third class districts maintaining a high school, in like manner as is now required by law for the examination of the books and accounts of state and county officers.

A copy of the examiner's report shall be filed with the county superintendent of schools, the state superintendent of public instruction, and the clerk of the school district, and any citizen of the state of Montana shall have the right to inspect, copy out and publish any of the facts therein contained.

The state examiner shall have the power and authority and it shall be his duty to make at least one (1) examination during each fiscal year (of) the books and accounts of all fire districts and volunteer fire departments created and existing in unincorporated areas, towns and villages supported by a mill levy.

For such examination a fee of seven dollars fifty cents (\$7.50) per hour per man shall be charged and said fee shall be paid by the fire district or fire department into the state treasury and credited by the state treasurer to the earmarked revenue fund.

A copy of such audit shall be filed with the clerk and recorder of the county in which such fire district or fire department exists.

The costs incurred by the state examiner and his assistants in conducting the examinations of county-free high schools, school districts or departments shall be reimbursed to the state at the rate of seventy dollars (\$70) per day for each person engaged in an examination, and the moneys shall be paid at the conclusion of the examination to the state treasurer who shall credit such payment to the general fund of the state.

**History:** En. Sec. 1, Ch. 84, L. 1913; re-en. Sec. 215, R. C. M. 1921; amd. Sec. 1, Ch. 164, L. 1937; amd. Sec. 1, Ch. 169, L. 1955; amd. Sec. 1, Ch. 137, L. 1959; amd. Sec. 1, Ch. 125, L. 1963; amd. Sec. 1, Ch. 141, L. 1963; amd. Sec. 3, Ch. 256, L. 1971.

**Amendments**

The 1971 amendment deleted the former third paragraph, for text of which see parent volume; added the final paragraph; and made a minor change in phraseology.

**82-1009. (216) Laws applicable to such examinations.** That all laws now in force relative to the examination of the books and accounts of county officers, are, and the same are hereby declared to be applicable to the examination of the books and accounts of incorporated cities and

towns, and to the books and accounts of school districts of the first and second class.

**History:** En. Sec. 2, Ch. 84, L. 1913;  
re-en. Sec. 216, R. C. M. 1921; amd. Sec.  
17, Ch. 249, L. 1967.

#### Amendments

The 1967 amendment deleted "state and" after "accounts of."

**82-1011. (218) Salary and expenses.** The salary of the state examiner, for all services rendered in any capacity whatever, shall be in such amount as may be specified by the legislative assembly in the appropriation to the state examiner, and in addition thereto the state shall pay the necessary office and travel expenses of himself and assistants. If the legislative assembly does not specify the maximum salary of the state examiner an increase in the salary of the state examiner must be approved by the board of examiners. Before approving any salary increase, the board of examiners shall review the salaries of comparable positions in Montana state government, other states, and private industry.

**History:** En. Sec. 1, Ch. 149, L. 1907;  
Sec. 213, Rev. C. 1907; amd. Sec. 1, Ch.  
93, L. 1911; re-en. Sec. 218, R. C. M. 1921;  
amd. Sec. 1, Ch. 98, L. 1953; amd. Sec. 7,  
Ch. 225, L. 1963; amd. Sec. 10, Ch. 237,  
L. 1967.

#### Amendments

The 1967 amendment substituted "in such amount \* \* \* to the state examiner" for "not more than ten thousand dollars (\$10,000) per year" in the first sentence, and added the last two sentences.

### 82-1014 to 82-1016. Repealed.

#### Repeal

These sections (Secs. 1 to 3, Ch. 279, L. 1959; Secs. 1, 2, Ch. 81, L. 1961; Sec. 91, Ch. 199, L. 1965), relating to the

examination of accounts of state institutions, were repealed by Sec. 23, Ch. 249, Laws 1967.

## CHAPTER 11—EXAMINERS, STATE BOARD OF—PRINTING CONTRACT AND SUPPLIES

### Section

82-1149. Establishment of prices for state printing.

### 82-1137. (260) State printing—union label, etc.

#### Cross-References

Printing defined, sec. 19-103.1.

**82-1149. (276) Establishment of prices for state printing.** Hereafter in all cases and instances where any publication is required by law, or is duly authorized, to be made, executed or accomplished by or for or on behalf of the state of Montana, or any of the institutions of said state or any of the departments, boards, bureaus, or commissions thereof, of any of the officers, agents or employees of the state when acting within the scope of their lawful authority and for the benefit of the state of Montana, the same shall be published in a newspaper printed and published in the state of Montana, and of general bona fide and paid circulation with second class mailing privilege, and having been printed and published continuously in the state of Montana for at least twelve (12) months immediately preceding such publication; the price for such publication and by whomsoever accomplished shall not exceed the following rate and stand-

and hereby established and prescribed as the maximum rate and standard for all publications as aforesaid.

(a) For every folio of one hundred (100) words, or any fraction thereof, two dollars and twenty-five cents (\$2.25) for the first insertion, and one dollar and twenty-five cents (\$1.25) for each subsequent insertion thereof required by law to be made.

(b) For rule and figure work, three dollars and seventy-five cents (\$3.75), for every folio of one hundred (100) words or any fraction thereof, for the first insertion, and one dollar and twenty-five cents (\$1.25) for each subsequent insertion thereof required by law to be made.

**History:** En. Sec. 1, Ch. 157, L. 1921; re-en. Sec. 276, R. C. M. 1921; amd. Sec. 1, Ch. 137, L. 1951; amd. Sec. 1, Ch. 307, L. 1969.

maximum price from \$3 to \$3.75 for the first insertion and from 90¢ to \$1.25 for each subsequent insertion.

#### Amendments

The 1969 amendment, in subdivision (a), raised the maximum price per folio from \$2 to \$2.25 for the first insertion and from 90¢ to \$1.25 for each subsequent insertion; and, in subdivision (b), raised the maxi-

#### Repealing Clause

Section 2 of Ch. 307, Laws 1969 repealed all acts and parts of acts in conflict therewith.

#### Cross-References

Printing defined, sec. 19-103.1.

### 82-1157. (283.1) Preference of Montana printers, etc.

#### Cross-References

Printing defined, sec. 19-103.1.

## CHAPTER 12—FIRE MARSHAL, STATE

#### Section

- 82-1201. Creation of office of state fire marshal—fire prevention advisory commission.
- 82-1202. Powers of the state fire marshal.
- 82-1202.1. Rules promulgated by state fire marshal—adoption of other standards—providing for a penalty for violation.
- 82-1202.2. Notice of public hearing—publication—adoption of rules—effective date.
- 82-1208. Special deputy fire marshals—acting fire marshal—fire marshal's employees.
- 82-1209. Investigation of fires.
- 82-1211. Penalty for violation of law.
- 82-1218. Entering of buildings for purpose of examination.
- 82-1231. Tax on fire insurance premiums for maintenance of state fire marshal's office.

**82-1201. (2737) Creation of office of state fire marshal—fire prevention advisory commission.** (1) There is an office of state fire marshal, which is under the supervision and control of the commissioner of insurance.

(2) The state fire marshal shall be appointed by the commissioner of insurance and shall serve at his pleasure.

(3) A person appointed state fire marshal shall:

(a) have at least ten (10) years of progressively responsible experience in fire protection; or

(b) a degree in engineering from a recognized institution of higher education and two (2) years' experience in fire protection; or

(c) a degree from a recognized institution of higher education in fire protection engineering or fire protection technology.

(4) Not later than thirty (30) days after this act becomes effective the commissioner of insurance shall appoint a fire prevention advisory commission composed of the following members:



- (a) One person representing the fire insurance industry whose initial term shall be for one (1) year;
- (b) One person representing industry whose initial term shall be for one (1) year;
- (c) One person representing full-time paid fire departments whose initial term shall be for two (2) years;
- (d) One person representing volunteer fire departments whose initial term shall be for two (2) years;
- (e) One person representing architects of the state whose initial term shall be for three (3) years;
- (f) One person representing the public whose initial term shall be for four (4) years;
- (g) The commissioner of insurance.

After termination of the initial term, all members shall be appointed for four (4) year terms. Appointed members of the commission shall be reimbursed for meetings at the rate of twenty dollars (\$20) per day plus actual expenses including mileage, food, and lodging. The commissioner of insurance shall serve as chairman, and the state fire marshal shall serve as secretary of the commission.

**History:** En. Sec. 1, Ch. 148, L. 1911; re-en. Sec. 2737, R. C. M. 1921; amd. Sec. 1, Ch. 229, L. 1967.

and under the supervision and control of the state auditor and commissioner of insurance ex officio."

#### Amendments

The 1967 amendment completely re-wrote this section. Prior to amendment, it read, "There is hereby created and established the office of state fire marshal, which shall be a department of

#### Cross-References

Advisory commission abolished, sec. 82A-1208.

Marshal's office abolished and functions transferred, sec. 82A-1202(5).

**82-1202. (2737.1) Powers of the state fire marshal.** The state fire marshal shall:

- (1) Make at least one inspection during every year, of each state institution, and submit a copy of the report to the state department of institutions with recommendations in regard to fire prevention, fire protection and to the public safety.
- (2) Make at least one inspection during every year, of each unit of the Montana university system, and submit a copy of the report to the executive secretary of the university system with recommendations in regard to fire prevention, fire protection and to the public safety.
- (3) Inspect public, business, or industrial buildings and require conformance to law or rules promulgated under the provisions of this act.
- (4) Do all things necessary and convenient for carrying into effect the fire prevention laws of this state governing this act and may, adopt necessary rules for safeguarding lives and property from the hazards of fire and explosion after consultation with the fire prevention advisory commission and approval by the commissioner of insurance. No rule shall become effective until after a public hearing held in the manner described in section 82-1202.2, R. C. M. 1947. If fire prevention rules are violated, the fire marshal may maintain an action to enjoin the use of all or a portion

of a building or facility, or restrain a specific activity, until there is compliance with the rules.

(5) Rules relating to building and equipment standards covered by the state or a municipal building code are effective after approval by the state building code council and filing with the secretary of state.

**History:** En. Sec. 1, Ch. 124, L. 1929; amd. Sec. 1, Ch. 18, L. 1943; amd. Sec. 1, Ch. 278, L. 1947; amd. Sec. 93, Ch. 199, L. 1965; amd. Sec. 2, Ch. 229, L. 1967; amd. Sec. 24, Ch. 366, L. 1969.

#### Compiler's Notes

The compiler deleted the number "4" after "section" in the second sentence of subdivision (4) as superfluous.

#### Amendments

The 1967 amendment substantially re-

wrote this section. For previous text, see parent volume.

The 1969 amendment, in the first sentence in subdivision (4), substituted "adopt" for "promulgate" before "necessary rules"; in the second sentence, inserted "R. C. M. 1947" after "82-1202.2"; and, in the last sentence, deleted "promulgated by the fire marshal" after "fire prevention rules" and substituted "the fire marshal" for "he" before "may maintain"; and added subdivision (5).

**82-1202.1. Rules promulgated by state fire marshal—adoption of other standards—providing for a penalty for violation.** (1) Rules promulgated by the state fire marshal by authority of section 82-1202, R. C. M. 1947, shall be reasonable and calculated to effect the purposes of this act. They shall include but not be limited to requirements for design, construction, installation, operation, storage, handling, maintenance or use of the following: structural requirements for various types of construction; building restrictions within congested districts; exit facilities from structures; fire alarm systems and fire extinguishing systems; fire emergency drills; flue and chimney construction; heating devices; electrical wiring and equipment; air conditioning, ventilating and other duct systems; refrigeration systems; flammable liquids; oil and gas wells; application of flammable finishes; explosives, acetylene, liquefied petroleum gas and similar products; calcium carbide and acetylene generators; flammable motion picture film, combustible fibres; hazardous chemicals; rubbish, open flame devices; parking of vehicles; dust explosions; lightning protection; and other special fire hazards.

(2) If rules relate to building and equipment standards covered by the state or a municipal building code, the rules are effective upon approval of the state building code council and filing with the secretary of state.

(3) Standards of the National Fire Protection Association, United States Bureau of Standards, American Insurance Association Standards may be adopted in whole or in part by reference.

(4) Any person violating any rule made under the provisions of this section shall be guilty of a misdemeanor.

**History:** En. 82-1202.1 by Sec. 3, Ch. 229, L. 1967; amd. Sec. 1, Ch. 120, L. 1969; amd. Sec. 25, Ch. 366, L. 1969.

#### Compiler's Notes

This section was amended twice in 1969, once by Ch. 120 and once by Ch. 366. Neither amendatory act mentioned nor in-

cluded the changes made by the other. Since the two amendments do not appear to conflict, the compiler has made a composite section incorporating both amendments. In the composite section the subsection added by Ch. 120 has been designated as (4) rather than (3).

**Amendments**

Chapter 120 of Laws 1969 substituted a requirement that rules promulgated by the state fire marshal "be reasonable and calculated to effect the purpose of this act" for a requirement that rules promulgated by the state fire marshal "establish minimum

standards of fire protection requirements" in subsection (1), and added subsection (4).

Chapter 366 of Laws 1969 inserted subsection (2) and renumbered former subsection (2) as subsection (3).

**82-1202.2. Notice of public hearing—publication—adoption of rules—effective date.** Notice of the time and place of public hearing required by section 82-1202, R.C.M. 1947, shall be published at least five (5) times in at least two (2) newspapers of general circulation throughout the state. The last published notice shall appear not less than fifteen (15) days prior to the public hearing. A copy of the notice of public hearing shall be furnished by mail to any person who files his address with the fire marshal together with a request for such notification. Any person may appear before the state fire marshal and present testimony on proposed rules in the manner prescribed by the marshal. Following the public hearing, the state fire marshal may approve, approve in modified form, or disapprove a proposed rule. The state fire marshal shall specify the date when any new rule or change in an existing rule becomes effective. A new rule or change in an existing rule relating to building and equipment standards covered by the state or a municipal building code is effective upon approval of the state building code council and filing with the secretary of state.

**History:** En. 82-1202.2 by Sec. 4, Ch. 229, L. 1967; amd. Sec. 26, Ch. 366, L. 1969.

**Repealing Clause**

Section 27 of Ch. 366, Laws 1969 read "Sections 66-2424, 66-2818, 69-2101 through 69-2103, 69-3701 through 69-3719, and 75-3103, R. C. M. 1947, are repealed."

**Amendments**

The 1969 amendment added the last sentence.

**82-1203, 82-1204. (2737.2, 2738) Repealed.****Repeal**

These sections (Sec. 2, Ch. 148, L. 1911; Sec. 2, Ch. 124, L. 1929), relating to the

appointment of the state fire marshal and to violations of section 82-1202, were repealed by Sec. 14, Ch. 229, Laws 1967.

**82-1208. (2742) Special deputy fire marshals—acting fire marshal—fire marshal's employees.** (1) In an emergency, or during the absence or disability of the state fire marshal, the commissioner of insurance may appoint an acting fire marshal, who shall perform the duties of the office, or any duty which may be assigned to him, such appointment to cease when the necessity therefor has been relieved.

(2) The state fire marshal may appoint special deputy state fire marshals throughout the state and define their duties. When performing these duties or attending a training course conducted by the state fire marshal, special deputy fire marshals may be paid at a rate not to exceed twenty dollars (\$20) per day plus per diem allowance for expenses and mileage at the same rates specified for state employees.

(3) The fire marshal may appoint assistants and clerical employees to perform duties as specified by the marshal to assist in carrying out the duties assigned him by law.



**History:** En. Sec. 5, Ch. 148, L. 1911; amd. Sec. 1, Ch. 95, L. 1913; re-en. Sec. 2742, R. C. M. 1921; amd. Sec. 5, Ch. 229, L. 1967.

**Amendments**

The 1967 amendment substantially re-wrote this section. For previous text, see parent volume.

**82-1209. (2743) Investigation of fires.** (1) The cause, origin, and circumstances of each fire, by which property has been destroyed or damaged, shall be investigated to determine whether the fire was the result of carelessness or design. The state fire marshal may superintend and direct the investigation if he deems it necessary.

(2) If the fire occurs within a municipality or organized fire district, the chief of the fire department shall make the investigation. If the fire occurs outside a municipality or organized fire district, the county sheriff shall make the investigation. If it appears that the fire was of suspicious origin, or if there was a loss of human life, the official responsible for the investigation shall notify the state fire marshal within twenty-four (24) hours, and shall file a written report of the cause with the state fire marshal within ten (10) days.

(3) If it appears that the fire was of suspicious origin, if there was a loss of human life, or if the property loss exceeded one hundred dollars (\$100) as soon as any adjustment has been made, a person representing the insurance company shall notify the official responsible for investigating the fire of the amount of adjustment and the apparent cause and circumstances of the fire.

(4) On or before February 15 of each year, each official responsible for investigating fires shall file a fire loss report for the immediately preceding calendar year with the state fire marshal. Reports shall be on forms, and shall contain information, prescribed by the state fire marshal.

**History:** En. Sec. 6, Ch. 148, L. 1911; re-en. Sec. 2743, R. C. M. 1921; amd. Sec. 6, Ch. 229, L. 1967.

**Amendments**

The 1967 amendment substantially re-wrote this section. For previous text, see parent volume.

**82-1210. (2744) Repealed.**

**Repeal**

This section (Sec. 7, Ch. 148, L. 1911), relating to fire marshal's investigations,

was repealed by Sec. 14, Ch. 229, Laws 1967.

**82-1211. (2745) Penalty for violation of law.** Any person who fails to comply with the requirements of section 82-1209, R.C.M. 1947, shall be fined not less than twenty-five dollars (\$25) nor more than two hundred dollars (\$200).

**History:** En. Sec. 8, Ch. 148, L. 1911; re-en. Sec. 2745, R. C. M. 1921; amd. Sec. 7, Ch. 229, L. 1967.

**Amendments**

The 1967 amendment substituted "Any person who fails to comply with the re-

quirements of section 82-1209, R. C. M. 1947" for "An officer named in the last two preceding sections who neglects to comply with any requirements of this chapter"; and made minor changes in style.

**82-1218. (2752) Entering of buildings for purpose of examination.** The state fire marshal, his deputies and subordinates, the chief of the fire department of each municipality or district where a fire department is estab-

lished, or the county sheriff where no fire department exists, at all reasonable hours may enter into all buildings and upon all premises within their jurisdiction for the purpose of determining whether the building or premise conforms to laws and rules relating to fire hazards and fire safety.

**History:** En. Sec. 15, Ch. 148, L. 1911; re-en. Sec. 2752, R. C. M. 1921; amd. Sec. 8, Ch. 229, L. 1967.

#### Amendments

The 1967 amendment substituted "municipality or district" for "city or village" before "where a fire"; substituted "county sheriff" for "mayor of a city or village"

before "where no fire"; deleted "or the justice of the peace of a township in territory without the limits of a city or village" before "at all reasonable hours"; and substituted "determining whether the building or premise conforms to laws and rules relating to fire hazards and fire safety" for "examination" at the end of the section.

### 82-1227, 82-1228. (2757, 2758) Repealed.

#### Repeal

These sections (Secs. 20, 21, Ch. 148, L. 1911), relating to the compensation of

fire department officials, were repealed by Sec. 14, Ch. 229, Laws 1967.

### 82-1230. (2760) Oath of marshal and deputy.

#### Cross-References

Bonds of state officers and employees, sec. 6-105 et seq.

**82-1231. (2761) Tax on fire insurance premiums for maintenance of state fire marshal's office.** Each insurer authorized to effect insurance on risks enumerated in subsection two of section 11-1919, doing business in this state shall pay to the state auditor and commissioner of insurance ex officio, during the month of February or March in each year, in addition to the taxes on premiums required by law to be paid by it, a tax of three-fourths of one per cent ( $\frac{3}{4}$  of 1%) on the fire portion of the direct premiums on such risks received during the calendar year next preceding, after deducting cancellations and return premiums.

**History:** En. Sec. 24, Ch. 148, L. 1911; re-en. Sec. 2761, R. C. M. 1921; amd. Sec. 1, Ch. 83, L. 1941; amd. Sec. 1, Ch. 162, L. 1947; amd. Sec. 1, Ch. 182, L. 1959; amd. Sec. 1, Ch. 312, L. 1969; amd. Sec. 1, Ch. 110, L. 1971.

#### Amendments

The 1969 amendment raised the tax from "one-fourth of one per cent ( $\frac{1}{4}$  of 1%)" to "one-half of one per cent ( $\frac{1}{2}$  of 1%)."

The 1971 amendment increased the tax from one-half of one per cent to three-fourths of one per cent; and made a minor change in phraseology.

## CHAPTER 13—GOVERNOR—POWERS—RECORDS—SECRETARY

#### Section

82-1311. "Governor-elect" defined.

82-1312. Duties of state controller.

82-1313. State employees chosen by governor-elect—compensation—employees of the department of administration to assist governor-elect.

82-1314. Funds—state controller to request an appropriation.

### 82-1301. (124) Powers and duties of governor.

#### Compiler's Notes

Chapter 293, Laws 1969 created and funded (in part with matching federal

funds) a commission on the reorganization of the executive branch of the state government. The act provided for the com-

mission's composition and procedures and required that any recommendations be reported no later than December 1, 1970.

Sections 23-103 to 23-106 referred to in

subdivision 10, were repealed by Sec. 248, Ch. 368, Laws of 1969. For similar provisions in current law, see secs. 23-2901 to 23-2903.

### **82-1309. Enemy attack upon United States and governor, etc.**

#### **Cross-References**

Line of succession extended to legislators, sec. 82-3802.

### **82-1310. Emergency temporary seat of government—designation.**

#### **Cross-References**

Moving seat of government after attack, sec. 82-3807.

**82-1311. "Governor-elect" defined.** As used in this act, unless the context clearly indicates otherwise:

(1) "Governor-elect" means the person elected at a general election to the office of governor who is not the incumbent governor.

**History:** En. Sec. 1, Ch. 47, L. 1969.

#### **Title of Act**

#### **Compiler's Notes**

As enacted, this section contained no subdivision (2).

An act to provide for orderly transition of state government after the election of a new governor by providing funds and other necessary assistance for the governor-elect.

**82-1312. Duties of state controller.** The state controller shall provide the governor-elect and his necessary staff with suitable office space in the capitol building, together with furnishings, supplies, equipment, and telephone service for the period between the general election and the inauguration.

**History:** En. Sec. 2, Ch. 47, L. 1969.

**82-1313. State employees chosen by governor-elect—compensation—employees of the department of administration to assist governor-elect.** The governor-elect may obtain the assistance of persons of his own choosing, between the general election and inauguration, and they shall receive reasonable compensation for their services. These persons shall be state employees, but they shall not be subject to any civil service or personnel laws or rules of the state. In addition, the governor-elect may request that the state controller assign one (1) or more employees of the department of administration to assist the governor-elect and his staff in the study and interpretation of information. Employees of the department of administration shall be assigned for the time necessary between the general election and the inauguration.

**History:** En. Sec. 3, Ch. 47, L. 1969.

**82-1314. Funds — state controller to request an appropriation.** The funds necessary to carry out the provisions of this act shall be included in the appropriation request of the state controller to the legislative assembly meeting in regular session immediately prior to a general election when a governor will be chosen.

**History:** En. Sec. 4, Ch. 47, L. 1969.



## CHAPTER 15—HAIL INSURANCE, STATE BOARD OF

## Section

- 82-1516. Appointment of appraisers in case of dissatisfaction with official adjustment.  
 82-1519. Compensation of chairman and officers—report.

**82-1501. (350) State board of hail insurance, etc. .****Cross-References**

Board continued in office of state auditor, sec. 82A-2103.

**82-1516. (360) Appointment of appraisers in case of dissatisfaction with official adjustment.** (1) In case the party that has sustained the loss is dissatisfied with and refuses to accept the adjustment made by the official appraiser then he shall have the right to appeal to the state board of hail insurance, provided however, he shall make such appeal by registered mail within ten (10) days after receiving the adjustment offer of the state board in writing. Also it is further provided that the state board of hail insurance may require the posting of a cash bond of ten dollars (\$10) with the request for reappraisal of the first adjustment. In cases where the board requires the posting of the ten dollar (\$10) bond, the board may retain it if no increase is allowed. If an increase is obtained, the board will return the bond to the claimant. In case the adjuster who makes the second appraisal fails to secure an agreement the claimant may at his option submit the matter to arbitration as herein provided or sue the state board of hail insurance in the district court of the county where the loss occurred within ninety (90) days from the date of receipt of written notice of the second appraisal. Such actions shall be trials de novo and the Montana Rules of Civil Procedure shall apply. If the claimant elects to submit the matter to arbitration he shall then appoint one disinterested person as appraiser, and the official appraiser shall appoint another person as appraiser, and the two shall select a third disinterested person and the three shall then proceed to adjust the loss in the same manner as specified in section 82-1515 and the judgment of the majority shall be the judgment of said appraisers and shall be binding upon both parties as the final determination of said loss; provided, however, that if the insured does not recover a greater sum than allowed by the official appraiser in the first instance, he shall pay the expenses of the said three appraisers and their witnesses in making said adjustment, but if he is awarded a larger sum then the same shall be paid by the state board of hail insurance.

(2) and (3). \* \* \* [Same as parent volume.]

**History:** En. Sec. 9, Ch. 169, L. 1917; amd. Sec. 6, Ch. 34, L. 1919; re-en. Sec. 360, R. C. M. 1921; amd. Sec. 10, Ch. 40, L. 1923; amd. Sec. 4, Ch. 33, L. 1949; amd. Sec. 1, Ch. 69, L. 1963; amd. Sec. 76, Ch. 147, L. 1963; amd. Sec. 1, Ch. 170, L. 1967.

**Amendments**

The 1967 amendment added "within ninety (90) days from the date of receipt of written notice of the second appraisal" at the end of the fifth sentence of subsection (1).

**82-1519. (363) Compensation of chairman and officers—report.** It shall be the duty of all public officers to perform the duties relative to hail insurance under this act, without other compensation than that allowed

by law. The chairman of the state board of hail insurance shall receive a salary in such amount as may be specified by the legislative assembly in the appropriation to the board of hail insurance and all appointed officers and employees under this act shall be allowed the per diem and mileage allowed state employees. The compensation of all appointed officers and employees of the board shall be fixed by the state board of hail insurance. If the legislative assembly does not specify the maximum salary for the head of the agency, the salary shall be fixed by the state board of hail insurance after approval by the board of examiners. Before approving any salary increase, the board of examiners shall review the salaries of comparable positions in Montana state government, other states, and private industry.

The chairman of the state board of hail insurance shall report as provided in section 2 [82-4002] of this act.

**History:** En. Sec. 12, Ch. 169, L. 1917; amd. Sec. 2, Ch. 183, L. 1921; re-en. Sec. 363, R. C. M. 1921; amd. Sec. 12, Ch. 40, L. 1923; amd. Sec. 1, Ch. 165, L. 1929; amd. Sec. 1, Ch. 53, L. 1951; amd. Sec. 1, Ch. 165, L. 1961; amd. Sec. 1, Ch. 188, L. 1965; amd. Sec. 11, Ch. 237, L. 1967; amd. Sec. 38, Ch. 93, L. 1969.

such amount \* \* \* of hail insurance" for "not in excess of six hundred dollars (\$600) per month" in the second sentence, and added the last two sentences in the first paragraph.

The 1969 amendment substituted the reporting requirements of section 82-4002 for former provision requiring annual financial reports in the second paragraph.

#### Amendments

The 1967 amendment substituted "in

### CHAPTER 19—PURCHASING DEPARTMENT AND AGENT

#### Section

- 82-1910. Supervision of public printing.
- 82-1914. Sale of state property.
- 82-1916. Printing and publications.
- 82-1917. Requisitions for supplies—manner of letting contracts.
- 82-1918. Contracts limited to three years.
- 82-1924. State contracts to be awarded to lowest responsible resident bidder.
- 82-1925. Residence defined—domestic corporations.
- 82-1925.1. State board of equalization to determine residency of contractor—endorsement upon license—applications for redetermination of residency—furnishing lists—board's determination as prima facie evidence.
- 82-1926. Contract provision for preference to Montana products—failure to comply—federal-aid projects.
- 82-1927. Restriction on submitting additional bids when working beyond contract time.
- 82-1928. Excusable delays not considered working beyond contract time.

#### 82-1901. (284) Creation of state purchasing department and agent.

##### Cross-References

Department abolished and functions transferred, sec. 82A-202(1).  
 Agent's position abolished and functions transferred, sec. 82A-202(2).

#### 82-1906. (289) Contracts for printing and supplies.

##### Cross-References

Printing defined, sec. 19-103.1.

**82-1910. (293) Supervision of public printing.** (1) The state purchasing agent shall supervise and attend to all public printing and shall prevent duplication and unnecessary printing; all forms, blanks, and documents printed for distribution to the departments of state government

or state institutions shall be serially numbered and indexed by the state purchasing agent and sample copies of each thereof permanently retained in his library; and the state purchasing agent shall from time to time furnish to the public general information as to the nature, description, and official numbers of such reports as are available for public distribution.

(2) The state controller shall not approve a claim for printing submitted by any state officer, agency, or institution unless:

(a) a purchase order has been prepared and approved by the state purchasing agent prior to ordering the printing; or

(b) written approval has been given by the state purchasing agent to order the printing without preparation of a purchase order.

**History:** En. Sec. 10, Ch. 197, L. 1921; re-en. Sec. 293, R. C. M. 1921; amd. Sec. 1, Ch. 15, L. 1969.

paragraph as subsection (1), deleted "the" before "state government," and added subsection (2).

#### Amendments

The 1969 amendment designated the first

#### Cross-Reference

Printing defined, sec. 19-103.1.

**82-1914. (293.4) Sale of state property.** The state controller shall have exclusive power, subject to the consent and approval of the governor, to sell, or otherwise dispose of, or to authorize the sale or other disposition of, all materials and supplies, service, equipment, or other personal property of every kind now owned by the state of Montana, but not needed or used by any state institution or by any department of the state government.

All sales of highway equipment shall be by public auction or sealed bids and all proceeds received by the state controller from the sale of all material, supplies, equipment and all other personal property of the state highway commission shall be placed in the earmarked revenue fund to the credit of the highway commission.

**History:** En. Sec. 4, Ch. 66, L. 1923; amd. Sec. 74, Ch. 199, L. 1965; amd. Sec. 1, Ch. 11, L. 1971.

highway commission be placed in its earmarked revenue fund.

#### Amendments

The 1971 amendment added the second paragraph, providing that the proceeds from the sale of property of the state

#### Effective Date

Section 2 of Ch. 11, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 2, 1971.

### **82-1915. (293.5) Contracts for supplies of state agencies.**

#### Service Contract

Contract to provide janitorial services, maintenance service and supplies for capitol complex required competitive bidding

for its award. State ex rel. Great Falls Mr. Klean v. Montana State Board of Examiners, 153 M 220, 456 P 2d 278.

**82-1916. (293.6) Printing and publications.** The state purchasing agent shall have exclusive power, subject to the consent and approval of the governor, to contract for all printing for any purpose used by the state of Montana in any state office, elective or appointive or by any state board, commission, bureau, state institution or department except the printing of the decisions of the supreme court as provided in section 82-2004, and shall supervise and attend to all public printing of the state of Montana in the manner in this act provided, and shall prevent duplica-



tion and unnecessary printing; all forms, blanks and documents printed for distribution to the departments of the state government or state institutions shall be serially numbered and indexed by the state purchasing agent and sample copies of each thereof permanently retained in his office; and the state purchasing agent shall from time to time furnish to the public general information as to the nature, description and official numbers of such reports as are available for public distribution.

Unless otherwise provided by law, the state purchasing agent in letting contracts as provided in this act, for the printing, binding and publishing of all laws, journals and reports of the various offices, departments, boards, commissions and institutions of the state, shall have the power to determine the quantity, quality, style and grade of all such printing, binding and publishing.

**History:** En. Sec. 6, Ch. 66, L. 1923; amd. Sec. 7, Ch. 80, L. 1961; amd. Sec. 9, Ch. 261, L. 1967; amd. Sec. 43, Ch. 93, L. 1969.

#### Compiler's Notes

Section 82-2004, referred to in the first paragraph of this section, was repealed by Sec. 2, Ch. 305, Laws 1967. For present law dealing with the style and publication of supreme court reports, see sec. 82-2002.

#### Amendments

The 1967 amendment, in the subparagraph beginning "To the librarian," substituted "two (2) copies of each report" for "forty (40) copies of printed reports and a minimum of four (4) copies of mimeographed or carbon reports"; and deleted the following two paragraphs which read, "The historical society of Montana shall distribute publications so received to the public libraries, and other educational, scientific, library or art institutions of the state, which may apply to be put on the mailing list for all or a portion of the state publications; and to

such libraries and other institutions outside this state with which the historical society of Montana may have established exchange relations" and "The historical society of Montana shall transmit to the United States Library of Congress, two (2) copies of every administrative report or study"; and added the last subparagraph.

The 1969 amendment deleted the final three paragraphs concerning the governor's certification of reports for publication and the printing and distribution of such reports.

#### Repealing Clause

Section 44 of Ch. 93, Laws 1969 read "Sections 40-2712, 41-1607, 41-1608, 46-106, 46-242, 66-2106, 72-138, 75-1309, 75-1310, 81-206, 81-1702.4, 82-804.3, 82-2704, 82-3506, and 82-3708, R. C. M. 1947, are repealed."

#### Cross-References

Printing defined, sec. 19-103.1.

State publications distribution center, secs. 44-132 to 44-139.

### 82-1917. (293.7) Requisitions for supplies—manner of letting contracts.

State officers, commissioners or boards, or departments, superintendents of state institutions or departments shall tabulate in detail the amount of supplies on hand for any class of merchandise for such period as determined by the state purchasing agent, and the additional supplies needed for a period of time not to exceed one year's supply. The state purchasing agent shall make examination of the amount of supplies on hand and shall determine from such examination and from the statements so furnished him, as in this section provided, the additional amount of supplies necessary and shall make an itemized statement thereof, all of which acts of said state purchasing agent shall be subject to approval of the governor. As soon as the state purchasing agent shall determine, as in this section provided, what kind of supplies and the amount necessary for the state of Montana to purchase for its state offices, boards, commissions, departments or institutions, he shall make such purchases.

All purchases by the state purchasing agent shall be based on competitive bids. On any purchase where the estimated expenditure shall be two thousand dollars (\$2,000) or over, sealed bids shall be solicited by mail from each person, firm or corporation who has filed with the state purchasing agent a request in writing that it be listed for solicitation on bids for such particular items set forth in such listing: provided, that if any person, firm or corporation whose name is listed shall fail to respond to any solicitation for bids, after the receipt of two such solicitations, such listing shall, within the discretion of the state purchasing agent, be canceled: provided, further, that it shall be within the discretion of the state purchasing agent to advertise for such purchases. If bids are solicited through advertising, such advertisement shall be made in at least three newspapers, one of which must be a daily, of general circulation printed within the state, once each week for two (2) consecutive weeks, and such advertisement shall state that sealed proposals will be received by the state purchasing department, up to a time to be mentioned therein, for furnishing supplies for such state offices, boards, commissions, departments or institutions, which notice shall also state that detailed statements of supplies to be furnished are on file at the office of the state purchasing department and subject to inspection, and shall also specify that at a certain time, to be therein mentioned, said proposals will be opened, and contracts awarded to the lowest responsible bidder.

On purchases where the estimated expenditure is less than two thousand dollars (\$2,000), bids shall be secured without advertising, but the state purchasing agent shall solicit bids for such supplies by notice sent by mail to prospective suppliers whose names are listed as hereinbefore provided, which notice shall contain the same information as is herein required to be set forth in advertisements.

In the case of all bids as herein provided, there shall be separate proposals and separate contracts. Each proposal may be accompanied by sample supplies proposed to be furnished. The proposals shall be in writing, sealed and marked, "proposals for furnishing supplies," and shall be addressed to the state purchasing agent, Helena, Montana.

At the time set for the opening of bids, said proposals shall be opened in public, and contracts awarded to the lowest responsible bidder. The department shall have the right to reject any and all bids. If all proposals be rejected, proposals shall again be invited and proceeded with in the same manner; provided, however, that in such event, the state purchasing agent may, with the approval of the governor, purchase such supplies on the open market if they can be so purchased at a better price.

With any proposal the state purchasing agent may require a certified check on some responsible bank, payable to the treasurer of the state of Montana, equal in amount to five per cent (5%) of the sum of such proposal, as a guarantee for the faithful performance of any contract awarded. After the award is made, all checks deposited as a guarantee shall be returned, except that of the successful bidder whose check shall be held until contract signed and bond filed and approved, if bond be

required. All proposals shall include the delivery of the supplies to the departments and institutions for which they are purchased.

The state officers, superintendents, commissioners, departments or institutions, shall not have the authority to purchase any supplies or material, except on approval of the state purchasing agent.

**History:** En. Sec. 7, Ch. 66, L. 1923; amd. Sec. 2, Ch. 69, L. 1949; amd. Sec. 1, Ch. 301, L. 1971.

#### Amendments

The 1971 amendment reduced the number of solicitations required by the first proviso to the second sentence of the second paragraph from three to two; substituted "one of which must be a daily" in the last sentence of the second paragraph for a requirement that all three be dailies; reduced the advertising require-

ment specified in the last sentence of the second paragraph from three to two weeks; deleted "the first publication to be not less than twenty-two (22) days before the date set for the opening of bids" after "consecutive weeks" in the last sentence of the second paragraph; substituted "may" for "shall" in the second sentence of the fourth paragraph; deleted "ample in quantity \* \* \* intended delivery" from the end of the second sentence of the fourth paragraph; and made minor changes in style.

**82-1918. (293.8) Contracts limited to three years.** No contracts shall be made for a longer period than three (3) years and such contract shall provide for the delivery of such articles at such times and in such quantities as the purchasing agent may determine.

**History:** En. Sec. 8, Ch. 66, L. 1923; amd. Sec. 2, Ch. 301, L. 1971.

#### Amendments

The 1971 amendment increased the maximum contract period from one year to three years.

**82-1924. State contracts to be awarded to lowest responsible resident bidder.** In order to provide for an orderly administration of the business of the state of Montana in awarding contracts for materials, supplies, equipment, construction, repair and public works of all kinds, it shall be the duty of each board, commission, officer or individual charged by law with the responsibility for the execution of the contract on behalf of the state, board, commission, political subdivision, agency, school district or a public corporation of the state of Montana, to award such contract to the lowest responsible bidder who is a resident of the state of Montana and whose bid is not more than three per cent (3%) higher than that of the lowest responsible bidder who is a nonresident of this state. In awarding contracts for purchase of products, materials, supplies or equipment such board, commission, officer or individual shall award the contract to any such resident whose offered materials, supplies or equipment are manufactured or produced in this state by Montana industry and labor and whose bid is not more than three per cent (3%) higher than that of the lowest responsible resident bidder whose offered materials, supplies or equipment are not so manufactured or produced, provided that such products, materials, supplies and equipment are comparable in quality and performance. This requirement shall prevail whether the law requires advertisement for bids or does not require advertisement for bids and it shall apply to contracts involving funds obtained from the federal government unless expressly prohibited by the laws of the United States or regulations adopted pursuant thereto.



**History:** En. Sec. 1, Ch. 183, L. 1961;  
amd. Sec. 1, Ch. 197, L. 1969.

#### Amendments

The 1969 amendment substituted "three per cent (3%)" for "two per cent (2%)" before "higher" in the first sentence; inserted the second sentence; substituted "requires" for "required" before "advertisement for bids" in the present third sentence and added "and it shall apply to \* \* \* adopted pursuant thereto" at the end.

#### Janitorial and Maintenance Services

Although this section provides 2% preference for resident bidders, it also establishes a general policy of requiring competitive bidding, including contracts for janitorial services for capitol complex, and such contracts must be let by competitive bidding. State ex rel. Great Falls Mr. Klean v. Montana State Board of Examiners, 153 M 220, 456 P 2d 278.

**82-1925. Residence defined—domestic corporations.** For the purpose of this act the word "resident" shall include actual residence of an individual within this state for a period of more than one (1) year immediately prior to bidding; in a partnership enterprise or an association, the majority of all partners or association members shall have been actual residents of the state of Montana for more than one (1) year immediately prior to bidding; domestic corporations organized under the laws of the state of Montana are prima facie eligible to bid as residents but this qualification may be set aside and a successful bid disallowed where it is shown to the satisfaction of the board, commission, officer or individual charged with the responsibility for the execution of such contract that said corporation is a wholly owned subsidiary of a foreign corporation or that said corporation was formed for the purpose of circumventing the provisions of this act relating to residence. Notwithstanding the foregoing, any individual, partnership or corporation, foreign or domestic and regardless of ownership thereof, whose offered materials, supplies or equipment are manufactured or produced in this state by industry located in Montana and Montana labor shall be deemed to be a resident for the purpose of this act.

**History:** En. Sec. 2, Ch. 183, L. 1961;  
amd. Sec. 2, Ch. 197, L. 1969.

#### Amendments

The 1969 amendment, in the latter portion of the first sentence, deleted "(a) composed of resident organizers or directors of this state who have no substantial

interest or investment in the corporation for which they are acting and that the ownership and control of said company is vested in nonresidents"; deleted item designations (b) and (c); added the second sentence; and made minor changes in style.

**82-1925.1. State board of equalization to determine residency of contractor—endorsement upon license—applications for redetermination of residency—furnishing lists—board's determination as prima facie evidence.** It shall be the duty of the state board of equalization of the state of Montana, at the time that a public contractor makes application for a license under the provisions of chapter 35, Title 84 of this code, to determine whether or not such contractor is a "resident" of the state of Montana within the meaning of sections 82-1924 and 82-1925. The board shall endorse upon the contractor's license whether or not such contractor is a "resident" as aforesaid. If a contractor is not a "resident" at the time such license is issued, but thereafter qualifies as such, he may apply to the board of equalization for a redetermination of his residency, and, if found to qualify as a "resident," the board shall endorse such fact upon

his license, together with the date of such qualification. It shall be the duty of the state board of equalization, upon written request of any board, commission, officer or individual charged by law with the responsibility for the execution of any contract subject to the provisions of section 82-1924 on behalf of the state, board, commission, political subdivision, agency, school district or public corporation of the state of Montana, to furnish a list of contractors who have qualified as "residents," as aforesaid, to such requesting body. The determination of the board of equalization that a public contractor is or is not a "resident" within the meaning of sections 82-1924 and 82-1925 shall be prima facie evidence of such fact.

**History:** En. Sec. 1, Ch. 217, L. 1967.

#### **Title of Act**

An act providing for the determination by the board of equalization of the state of Montana of whether a bidder on public contracts is a "resident" within the meaning of sections 82-1924 and 82-1925, Revised Codes of Montana, 1947.

#### **Separability Clause**

Section 2 of Ch. 217, Laws 1967 read "If any part of this act shall be held to be unconstitutional or invalid by a court of competent jurisdiction, it is the intent of the legislative assembly that all valid parts that are severable from the invalid part remain in effect."

**82-1926. Contract provision for preference to Montana products—failure to comply—federal-aid projects.** Each contract awarded by any political subdivision, school district, public corporation or agency of the state of Montana shall contain among its provisions a requirement that in all instances products manufactured or produced in this state by Montana industry and labor shall be preferred for use in all projects and in all materials, supplies and equipment, if such products, materials, equipment and supplies are comparable in price and quality. Further, in this connection, it is the intent of this act that wherever possible products manufactured and produced in this state which are suitable substitutes for products manufactured or produced outside the state and comparable in price, quality and performance, shall be preferred for use in all projects and in all state institutions.

Failure to comply with the law in this respect shall disqualify such contractor as a qualified bidder for future contracts with the state of Montana, any legal subdivision of the state of Montana, any school district, public corporation or agency for a period of two (2) years.

The preference herein given to Montana products shall apply to contracts involving funds obtained from the federal government unless expressly prohibited by the laws of the United States or regulations adopted pursuant thereto.

**History:** En. Sec. 3, Ch. 183, L. 1961; amd. Sec. 3, Ch. 197, L. 1969.

#### **Amendments**

The 1969 amendment rewrote the final paragraph which formerly provided that

no preference should be given on contracts where federal aid had been obtained except as provided for by federal laws and that section 82-1157 was not amended or repealed by the act enacting 82-1926.

**82-1927. Restriction on submitting additional bids when working beyond contract time.** A public contractor, as defined in section 84-3501, R.C.M. 1947, who has been awarded a contract by the state of Montana, or any board, commission or department thereof, or by any board of county commissioners, or by any city or town council, or agency thereof,

for the construction or reconstruction of a public work, and is working beyond the contract time (including any authorized time extensions) shall not submit any additional bids or proposals, nor enter into any additional contract with any public agency of the state of Montana, county, or city thereof, until he has completely executed the contract upon which he is working beyond contract time, and all supplemental agreements thereto.

**History:** En. Sec. 1, Ch. 141, L. 1967.

#### **Title of Act**

An act to provide that a public contractor who is working over the contract time on a previously awarded contract from the state of Montana, or any board, commission or department thereof, or from any

board of county commissioners, or from any city or town council, or agency thereof, may not submit any additional bids or proposals to any of the above-mentioned agencies until he has completely executed the present contract upon which he is working beyond contract time; amending section 84-3507, R. C. M. 1947.

**82-1928. Excusable delays not considered working beyond contract time.** A public contractor shall not be considered to be working beyond contract time if the delay is caused by an accident or casualty produced by physical cause which is not preventable by human foresight, i.e., any of the misadventures termed an "Act of God."

**History:** En. Sec. 2, Ch. 141, L. 1967.

## CHAPTER 20—REPORTERS OF DECISIONS OF SUPREME COURT— PUBLICATION AND DISTRIBUTION OF REPORTS

### Section

82-2002. Duties of reporters.

**82-2002. (379) Duties of reporters.** The reporters of the decisions of the supreme court shall make careful and accurate reports of the cases decided by the supreme court. The reports of such cases shall be made under the supervision of, and pursuant to rules and regulations promulgated by the justices of the supreme court. Reports of all cases shall be furnished to the West Publishing Company for inclusion in their publication, the Pacific Reporter, and to any other private printing or duplicating concern requesting such reports for publication. The board of examiners, on request of the supreme court, shall contract with a publishing house to publish volumes of reports, the style, size and format thereof to be determined by the justices, and such board shall in such event prepare and issue a call for bids and in accordance with the terms and specifications of the call, enter into a contract with the lowest and best bidder.

**History:** En. Sec. 891, Pol. C. 1895; re-en. Sec. 307, Rev. C. 1907; re-en. Sec. 379, R. C. M. 1921; amd. Sec. 1, Ch. 174, L. 1947; amd. Sec. 1, Ch. 14, L. 1961; amd. Sec. 1, Ch. 305, L. 1967.

#### **Repealing Clause**

Section 2 of Ch. 305, Laws 1967 read "Sections 82-2003, 82-2004, 82-2005 and 82-2006, Revised Codes of Montana, 1947, are hereby repealed."

#### **Amendments**

The 1967 amendment added the last two sentences.

## **82-2003 to 82-2006. (380 to 383) Repealed.**

#### **Repeal**

These sections (Secs. 892 to 895, Pol. C. 1895; Secs. 1 to 3, Ch. 1, L. 1925; Sec. 1, Ch. 111, L. 1943; Sec. 1, Ch. 139, L. 1947;

Sec. 2, Ch. 14, L. 1961), relating to the style and title of supreme court reports, were repealed by Sec. 2, Ch. 305, Laws 1967.



## CHAPTER 27—CO-ORDINATOR OF INDIAN AFFAIRS

## Section

82-2701. Legislative policy.

82-2702. Office of state co-ordinator of Indian affairs created—appointment of co-ordinator—term—salary—office.

82-2703. Duties of co-ordinator.

**82-2701. Legislative policy.** Whereas, a considerable portion of the citizens of the state of Montana are members of the Indian race, and,

Whereas, in the course of the past eighty years these Indian citizens of the state of Montana have been driven from their native valleys and plains and are at present living and residing upon reservations set apart for such purposes by the United States of America, and by virtue of said isolation and supervision by the federal government, great problems of economic and social significance have arisen and presently exist, and that no suitable progress has been made to solve such problems by reason of the fact that the Indians and those who are attempting to aid them in the solution of their problems have never been able to present a co-ordinated and united effort in solving such problems, and

Whereas, it is hereby declared that it is the legislative policy of this state that the best interests of the Indians will be served by the fostering of a program which is designed to establish and place our Indian citizens in a position whereby they will be able to take their rightful place in our society, and assume the rights, duties and privileges of full citizenship, it is therefore necessary that a state office of the co-ordinator of Indian affairs be established so that the problems of the Indians of Montana can be approached and reconciled from a state level in co-operation with the United States of America, and

Whereas, agencies of the federal government retain jurisdiction on Indian reservations in the state of Montana in the administration of economic, social, health, education and welfare programs for Indians, and

Whereas, such Indians as who reside off of said reservations do not generally qualify for participation in such federal programs, and are often prohibited from voting on tribal affairs and for tribal officers, and

Whereas, there are sizeable numbers of off-reservation Indians residing in our state of both enrolled and unofficial tribal descent (landless) whose needs for environmental assistance are borne by state and local agencies, and that these needs are derived from problems shared by all Indians, whether they reside on reservations or not, and in consideration of their desire for official voice and representation in seeking solutions to their problems, and

Whereas, programs of the state of Montana should not duplicate those supported by agencies of the federal government as regards jurisdiction of Indian people, and since state responsibility is effected with off-reservation Indians, and since such Indians require assistance to co-ordinate their affairs with various tribal groups and federal agencies where they have no official recognition,

Then therefore, let it be resolved that the co-ordinator of Indian affairs should assess the problems of all Indians to include those who reside off of known reservations, and who seek ways and means of communicating

their opinions and needs to agencies of responsibility, and that the co-ordinator should actively assist such people in organizing such efforts and that he act as representative and spokesman for such organized bodies of Indian people whether reservation or off-reservation classification, whenever such assistance is required.

**History:** En. Sec. 1, Ch. 203, L. 1951;  
amd. Sec. 1, Ch. 319, L. 1969.

#### Amendments

The 1969 amendment made a minor style change at the end of the third paragraph and added the last five paragraphs.

**82-2702. Office of state co-ordinator of Indian affairs created—appointment of co-ordinator—term—salary—office.** The office of the state co-ordinator of Indian affairs is hereby created. The co-ordinator shall be appointed by the governor from a list of five (5) qualified persons agreed upon by the tribal councils of the respective Indian tribes of the state of Montana. He shall hold such office for a term of four (4) years and shall be paid a salary in such amount as may be specified by the legislative assembly in the appropriation to the co-ordinator of Indian affairs. If the legislative assembly does not specify the maximum salary for the co-ordinator, any increase in the salary of the co-ordinator must be approved by the board of examiners. He shall maintain his office at the state capitol in Helena, Montana.

**History:** En. Sec. 2, Ch. 203, L. 1951;  
amd. Sec. 12, Ch. 237, L. 1967; amd. Sec. 2,  
Ch. 319, L. 1969.

#### Amendments

The 1967 amendment substituted "salary in such amount \* \* \* and private industry" for "salary of one dollar (\$1.00) per year."

The 1969 amendment deleted a former fifth sentence, which read "Before approving any salary increase the board of examiners shall review the salaries of comparable positions in Montana state government, other states and private industry."

#### Cross-References

Co-ordinator's office and functions transferred, sec. 82A-903(2).

**82-2703. Duties of co-ordinator.** It shall be the duty of the state co-ordinator of Indian affairs to do all necessary and proper things to carry out the legislative policy set forth in section 82-2701. He shall solicit rehabilitation loans, educational funds, economic, health, and housing funds from various sources for the purpose of enabling deserving Indians to become self-sufficient. Interest rates on such loans shall not exceed four per cent (4%) and such loans shall be disbursed through various federal programs established for these purposes.

He shall also do everything possible to bring about adequate housing and sanitation for Indians, whether they reside on reservations or not, and will co-ordinate such activities whenever necessary with the department of Indian affairs of the United States, the United States government and the state of Montana.

He shall acquaint himself with the problems confronting the Indians of Montana and he shall advise the legislative and executive branches of the state of Montana of such problems and shall make recommendations for the alleviation thereof. He shall also serve the Montana delegation in the federal Congress as an adviser and intermediary in the field of Indian

affairs, and shall act as spokesman for representative Indian organizations and groups, public and private, whenever such support is solicited.

**History:** En. Sec. 3, Ch. 203, L. 1951; amd. Sec. 3, Ch. 319, L. 1969.

#### Amendments

The 1969 amendment, in the second sentence of the first paragraph, inserted "educational funds, economic, health, and housing funds" after "rehabilitation loans" and substituted "various federal programs established for these purposes" for "Indian

loan associations to be established on the various reservations" at the end of the third sentence; in the second paragraph, substituted "and sanitation \* \* \* whenever necessary" for "on Indian reservations and in general to promote the welfare of our Indian citizens, and in doing these things he will co-ordinate"; and in the third paragraph, added "and shall act \* \* \* whenever such support is solicited."

### 82-2704. Repealed.

#### Repeal

Section 82-2704 (Sec. 4, Ch. 203, L. 1951), relating to reports by the state co-

ordinator of Indian affairs, was repealed by Sec. 44, Ch. 93, Laws 1969. For present law, see secs. 82-4001 and 82-4002.

## CHAPTER 29—AGRICULTURE AND LIVESTOCK COUNCIL

### 82-2901. Creation of the agriculture and livestock council.

#### Cross-References

Council abolished, sec. 82A-305(4).

## CHAPTER 30—NATURAL RESOURCES AND DEVELOPMENT COUNCIL

#### Section

82-3001. Creation of interdepartmental advisory council.

82-3002. Organization of the council.

82-3003. Powers and duties of the council.

**82-3001. Creation of interdepartmental advisory council.** There is hereby created an interdepartmental advisory council, to be known as the council on natural resources and development (hereinafter referred to as the "council"). It shall be composed of the following: The commissioner of state lands and investments, director of the department of state fish and game, state forester, secretary of the grass conservation commission, director of the Montana water resources board, executive secretary of the oil and gas conservation commission, director of the state bureau of mines and geology, state highway engineer, commissioner of agriculture, executive officer of the state board of health, director of planning and economic development, executive secretary of the state soil conservation committee, chairman of the outdoor recreation advisory committee, a member of the water well contractor's examining board, the secretary of the water pollution council, a member of the sanitarians registration council, secretary of the livestock commission, and the executive officer of the livestock sanitary board.

**History:** En. Sec. 1, Ch. 95, L. 1953; amd. Sec. 4, Ch. 280, L. 1965; amd. Sec. 1, Ch. 230, L. 1967; amd. Sec. 1, Ch. 269, L. 1969; amd. Sec. 1, Ch. 85, L. 1971.

#### Amendments

The 1967 amendment substituted "director of the department of state fish and

game" for "state game warden"; substituted "director of the Montana water resources board" for "a person designated by the state water conservation board"; substituted "the oil and gas conservation commission" for "the oil conservation board"; deleted "and" after "geology"; added "commissioner of agriculture \* \* \*



soil conservation committee" at the end of the section; and made a minor change in punctuation.

The 1969 amendment added "chairman of the outdoor recreation advisory committee \* \* \* sanitarians registration council" at the end.

The 1971 amendment added the secretary of the livestock commission and the executive officer of the livestock sanitary board to the council.

#### Cross-References

Council abolished, sec. 82A-1511(1).

**82-3002. Organization of the council.** The council shall organize within thirty (30) days after this act shall take effect by the election of a secretary and such other officers as it may deem necessary; the director of the Montana water resources board shall be the permanent chairman of the council. Thereafter, it shall hold meetings at least once every sixty (60) days at the seat of government in Helena, Montana, and shall hold additional meetings if and when the governor shall require it to do so. Notice of the meetings shall be given to the governor and representatives of the press by the secretary of the council.

**History:** En. Sec. 2, Ch. 95, L. 1953; amd. Sec. 2, Ch. 269, L. 1969.

#### Amendments

The 1969 amendment, in the first sentence, deleted "chairman" before "secre-

tary" and added "the director \* \* \* shall be permanent chairman of the council"; in the second sentence, substituted "meetings at least once every sixty (60) days" for "quarterly meetings" after "it shall hold"; and added the last sentence.

**82-3003. Powers and duties of the council.** The duties of the council shall be:

(a) and (b). \* \* \* [Same as parent volume.]

(c) The preparation of reports and recommendations in regard to matters which the governor shall bring to their attention or which, in their judgment, ought to be brought to the attention of the governor.

(d) At each regular meeting of the council, each member of the council shall make a written summary report of the programs or activities of his state agency with regard to water problems in the state. A copy of each report shall be delivered to the governor and to the secretary of the council prior to its regular meetings.

(e) Said meetings shall be open to interested members of the legislature.

(f) Immediately following each meeting, the secretary of the council shall prepare summary minutes and send copies to each member and to the governor.

**History:** En. Sec. 3, Ch. 95, L. 1953; amd. Sec. 3, Ch. 269, L. 1969.

#### Amendments

The 1969 amendment substituted "governor shall bring" for "governor may bring" in subdivision (c); and added subdivisions (d) through (f).

## CHAPTER 31—STATE AGENCY FOR SURPLUS PROPERTY

### 82-3105. Superintendent of public instruction, etc.

#### Cross-References

Bonds of state officers and employees, sec. 6-105 et seq.

## CHAPTER 32—STATE RECORDS

## Section

- 82-3207. Declaration of public policy as to preservation of state records.  
 82-3208. State archives created—appointment of archivist—duties and compensation.  
 82-3209. Archivist to preserve noncurrent records of permanent value—programs for management of records.

**82-3207. Declaration of public policy as to preservation of state records.**

The legislative assembly declares that it is the public policy of the state of Montana that noncurrent records of permanent value to the state should be preserved and protected; that the operations of state government should be made more efficient, more effective, and more economical through current records management; and that to the end that the people may receive maximum benefit from a knowledge of state affairs, the state should preserve its noncurrent records of permanent value for study and research.

**History:** En. Sec. 1, Ch. 108, L. 1969.

**Title of Act**

An act creating a state archives in the Montana historical society; providing for

appointment of a state archivist to preserve noncurrent records of permanent value to the state and to assist state officers and agencies in records management.

**82-3208. State archives created—appointment of archivist—duties and compensation.** There is a state archives in the Montana historical society for the preservation of noncurrent records of permanent value to the state and for records management. The director of the Montana historical society shall appoint a state archivist who serves at the pleasure of the director, define his duties, and fix his compensation with the approval of the board of trustees of the Montana historical society.

**History:** En. Sec. 2, Ch. 108, L. 1969.

**82-3209. Archivist to preserve noncurrent records of permanent value—programs for management of records.** The state archivist shall preserve noncurrent records of permanent value and shall establish and administer an active, continuing program for the economical and efficient management of state records. Upon request, he shall assist and advise in the establishment of records management programs in the executive, legislative, and judicial branches of state government with due regard to the functions of the officers and agencies involved.

**History:** En. Sec. 3, Ch. 108, L. 1969.

## CHAPTER 33—DEPARTMENT OF ADMINISTRATION

## Section

- 82-3303. Divisions within department.  
 82-3306. Supervision of mailing, data processing, duplicating, copying, and automatic typing facilities.  
 82-3316. Authority to construct buildings.  
 82-3317. Supervision of construction of buildings.  
 82-3323. Division of communications created—appointment of administrator.  
 82-3324. Qualifications of administrator of communications.  
 82-3325. Powers and duties of division of communications.  
 82-3326. Advisory council on communications—qualifications of members.  
 82-3327. Transfer of funds, equipments, facilities, and employees.  
 82-3328. Rights and privileges of employees transferred to division.  
 82-3329. Bases of director's decisions.

82-3330. Co-operation with other government agencies not limited.

82-3331. Exemption of law enforcement communications system—exception.

### 82-3301. Title and purpose of act.

#### Cross-References

Department abolished and functions transferred, sec. 82A-202(1).

**82-3303. Divisions within department.** The department shall consist of the following divisions:

(1) to (4). \* \* \* [Same as parent volume.]

(5) Budget

(6) Data processing

(7) Management systems

Each division shall be administered by a division head who shall be appointed by, and serve at the pleasure of the controller.

**History:** En. Sec. 3, Ch. 271, L. 1963; amd. Sec. 2, Ch. 101, L. 1969; amd. Sec. 1, Ch. 313, L. 1971.

The 1971 amendment added "(6) Data processing" and "(7) Management systems" to the list of divisions.

#### Amendments

The 1969 amendment added "(5) Budget" to the list of divisions.

#### Cross-References

Division of communications created, sec. 82-3323.

**82-3306. Supervision of mailing, data processing, duplicating, copying, and automatic typing facilities.** (1) The controller shall maintain and supervise any central mailing, data processing, duplicating and copying facilities for state agencies in the capitol area. Cost records shall be maintained and agencies shall be billed for services received.

(2) The controller shall establish regulations governing the procurement and utilization of data processing equipment, programs and data processing communication networks, duplicating and copying equipment, and equipment generally prescribed for automatic typing. The regulations of the state controller shall be formulated with the advice of a committee consisting of a representative of the board of regents, a representative of the state highway commission, and two (2) members appointed by the other two, and one (1) of the appointed members shall have special knowledge or experience with data processing equipment and one (1) shall have special knowledge or experience with the other named office equipment. Within these regulations the controller shall supervise the procurement and location of the herein named equipment for all state agencies.

**History:** En. Sec. 6, Ch. 271, L. 1963; amd. Sec. 1, Ch. 298, L. 1967; amd. Sec. 3, Ch. 101, L. 1969; amd. Sec. 2, Ch. 313, L. 1971.

The 1971 amendment inserted "data processing, duplicating and copying" in the first sentence of subsection (1); added the second sentence to subsection (1); inserted "and utilization" and "programs and data processing communication networks" in the first sentence of subsection (2); and deleted "other than the department of public instruction" from the end of the last sentence of subsection (2).

#### Amendments

The 1967 amendment numbered the original paragraph of the section "(1)"; and added subsection (2).

The 1969 amendment deleted "the budget director" after "committee consisting of" and substituted "two" for "three" after "members appointed by the other" in the second sentence of subsection (2).

#### Cross-References

Advisory committee abolished, sec. 82A-213(1).



**82-3309. Custodial care of capitol buildings and grounds.****Competitive Bidding**

Contract to provide janitorial services, maintenance service and supplies for capitol complex required competitive bidding.

State ex rel. Great Falls Mr. Klean v. Montana State Board of Examiners, 153 M 220, 456 P 2d 278.

**82-3316. Authority to construct buildings.** (1) Except as provided in subsection (2) of this section, a building costing more than twenty-five thousand dollars (\$25,000) may not be constructed without the consent of the legislative assembly. When a building costing more than twenty-five thousand dollars (\$25,000) is to be financed in such a manner as not to require legislative appropriation of moneys, such consent may be in the form of a joint resolution.

(2) (a) The governor may authorize the emergency repair or alteration of a building.

(b) The regents of the Montana university system may authorize the construction of revenue-producing facilities referred to in section 75-216, if they are to be financed wholly from the revenues therein described.

(c) The regents of the Montana university system, with the consent of the governor, may authorize the construction of a building that is financed wholly with federal or private moneys, if the construction of such a building will not result in any new programs.

**History:** En. Sec. 16, Ch. 271, L. 1963; amd. Sec. 2, Ch. 13, L. 1967.

**Compiler's Notes**

Section 75-216, referred to in subdivision (2) (b) of this section, was repealed by Sec. 63, Ch. 2, Laws 1971. Similar provisions are now contained in sec. 75-8503.

**Amendments**

The 1967 amendment substituted "may" for "shall" after "such consent" near the end of subsection (1); substituted "Montana university system" for "university of Montana" near the beginning of subsection (2)(b); substituted "revenue pro-

ducing facilities referred to in section 75-216" for "residence halls, dormitories, apartments and other student housing facilities; dining rooms and halls and other food service facilities; and student union building and facilities" in subsection (2) (b); and added "if they are to be financed wholly from the revenue therein described" at the end of subsection (2)(b).

**Effective Date**

Section 3 of Ch. 13, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 2, 1967.

**82-3317. Supervision of construction of buildings.** (1) For the construction of a building costing more than ten thousand dollars (\$10,000.00) the state controller shall:

(a) to (e). \* \* \* [Same as parent volume.]

(f) Concur in construction projects where the proposed cost is less than ten thousand dollars (\$10,000.00), but more than three thousand dollars (\$3,000.00), provided that before any contract is approved for construction, alteration or improvement no less than three (3) separate informal bids shall be procured from bona fide contractors duly licensed as such in the state of Montana.

(g) Not require the provisions of Montana law relating to advertising, bidding or supervision where proposed construction costs are less than three thousand dollars (\$3,000.00).

(2). \* \* \* [Same as parent volume.]

History: En. Sec. 17, Ch. 271, L. 1963;  
amd. Sec. 2, Ch. 264, L. 1969.

#### Amendments

The 1969 amendment added subdivisions  
(f) and (g) to subsection (1).

### 82-3318. General powers and duties of controller.

#### Cross-References

Advisory council abolished, sec. 82A-  
213(2).

**82-3323. Division of communications created—appointment of administrator.** There is created the division of communications in the department of administration. The state controller shall appoint an administrator for the division of communications, subject to the approval of the governor, and subject to the rules and regulations governing all state employees. The administrator for communications may employ and fix the compensation of such additional personnel as may be necessary.

History: En. Sec. 1, Ch. 230, L. 1971.

#### Title of Act

An act creating a division of communications in the department of administration; providing for the appointment of an

administrator for the division; providing for the powers and duties of the division; providing for the implementation of this act; providing that this act shall not affect the rights and privileges of employees transferred to the division.

**82-3324. Qualifications of administrator of communications.** The administrator over the division of communications shall have technical training in the field or possess a bachelor's degree from an accredited college or university and shall have four years of progressively responsible experience in the field of communications or its equivalent.

History: En. Sec. 2, Ch. 230, L. 1971.

**82-3325. Powers and duties of division of communications.** The division of communications is hereby authorized and directed:

(1) To provide communication services to all agencies of state government. The state communications system shall be capable of passing voice, video, data, written information and other forms of communication to and from distant points. The division of communications shall prescribe adequate rules and regulations for the use of any communications equipment and facilities now in use or hereafter made available.

(2) To exercise general supervision over all existing communications systems for all agencies of state government.

(3) To plan, review and approve any additional installations of communications equipment and systems for all agencies of state government. In approving the installation of additional communications equipment or systems, the division shall first consult with and consider the recommendations and advice of the executive heads of the various state agencies.

(4) To approve standards and procedures for selection, acquisition and operation of communication equipment.

(5) To insure that all communications equipment is properly maintained. The division is authorized to contract the equipment maintenance if it is in the state's best interest. The division shall maintain cost records and bill agencies for services rendered.

(6) To provide assistance to the legislature, governor and state agencies relative to state and interstate communication matters.

(7) To provide a means whereby political subdivisions of the state may utilize the state communications system, upon such terms and under such conditions as the division may establish.

(8) To accept federal funds granted by Congress or by executive order for all or any purposes of this act, as well as gifts and donations from individuals and private organizations or foundations.

(9) To accept and provide for the technical transmission of programs provided by the division of educational television.

**History:** En. Sec. 3, Ch. 230, L. 1971.

**82-3326. Advisory council on communications—qualifications of members.** The director of the department, with the concurrence of the governor, shall create an advisory council on communications. The council shall include persons having expertise in the fields of voice, digital data, video transmission, mobile communication, and other means of communications as needed.

**History:** En. Sec. 4, Ch. 230, L. 1971.

**82-3327. Transfer of funds, equipments, facilities, and employees.** In order to provide for the orderly implementation of this act and to provide an economical, efficient, and effective system of communications for the state, the department of administration may order such transfer of appropriated funds, custody and control of equipment and facilities, and employees to the division of communications as may be necessary to carry out the purposes of this act.

**History:** En. Sec. 5, Ch. 230, L. 1971.

**82-3328. Rights and privileges of employees transferred to division.** The provisions of this act shall in no manner affect the rights or privileges of any employee transferred to the division of communications under the public employees retirement system, the group insurance plan, or personnel system.

**History:** En. Sec. 6, Ch. 230, L. 1971.

**82-3329. Bases of director's decisions.** It is incumbent on the director to base all decisions pertinent to Montana's state communication services on the factors of cost, quality of service, availability of service and ability to maintain the system.

**History:** En. Sec. 7, Ch. 230, L. 1971.

**82-3330. Co-operation with other government agencies not limited.** This act shall not be construed so as to prohibit or limit a state agency from availing itself of connection to and co-operation with other state and federal agencies for the purpose of communications and information gathering and distributing services.

**History:** En. Sec. 8, Ch. 230, L. 1971.



**82-3331. Exemption of law enforcement communications system—exemption.** The provisions of this act shall not apply to the law enforcement communications system, or its successor at law, except as to the provisions dealing with the purchase, maintenance and allocation of communication facilities; however, the law enforcement communications committee, or its successor at law, shall co-operate with the division of communications to co-ordinate the communications networks of the state.

**History:** En. Sec. 9, Ch. 230, L. 1971.

#### CHAPTER 35—COMMISSION ON PROBLEMS OF AGING

##### Section

82-3501. Commission created.

82-3502. Composition of commission—appointment and terms of members.

82-3503. Quorum of commission—officers—meetings.

82-3504. Functions of commission.

82-3505. Grants and gifts to commission—deposit and availability.

**82-3501. Commission created.** There is hereby created the commission on aging, hereafter called "the commission."

**History:** En. Sec. 1, Ch. 73, L. 1965;  
amd. Sec. 1, Ch. 12, L. 1967.

##### Cross-References

Commission abolished and functions transferred, sec. 82A-1902(3).

Quasi-judicial functions of commission transferred to board of social and rehabilitation appeals, sec. 82A-1907(3).

##### Amendments

The 1967 amendment substituted "commission on aging" for "committee on problems of aging" near the beginning of the section and substituted "commission" for "committee" at the end of the section.

**82-3502. Composition of commission—appointment and terms of members.** The commission shall consist of fifteen (15) members appointed by the governor as follows: One (1) member each from the following offices: state board of health, department of public institutions, Montana medical association, public employees' retirement system, department of public welfare, Montana nurses association, Montana nursing home association, the legislative assembly. Seven (7) citizen members shall be selected on the basis of active interest, experience and ability, none of whom shall be employees of the state. Five (5) commission members shall be appointed initially for terms of one (1) year; five (5) shall be appointed initially for terms of two (2) years, five (5) shall be appointed initially for terms of three (3) years. An appointment to replace a member whose term has expired shall be for three (3) years. An appointment to replace a member whose term has not expired shall be for the remainder of the term.

**History:** En. Sec. 2, Ch. 73, L. 1965;  
amd. Sec. 2, Ch. 12, L. 1967.

##### Amendments

The 1967 amendment substituted "commission" for "committee" wherever it appears in the section.

**82-3503. Quorum of commission—officers—meetings.** A majority of the members of the commission shall constitute a quorum for the transaction of business. The commission shall elect a chairman, a vice-chairman, a secretary and such other officers as it deems necessary. The commission shall meet on call of the chairman of the commission or the governor.

**History:** En. Sec. 3, Ch. 73, L. 1965;  
amd. Sec. 3, Ch. 12, L. 1967.

**Amendments**

The 1967 amendment substituted "commission" for "committee" wherever it appears in the section.

**82-3504. Functions of commission.** The commission shall: 1. to 4.

\* \* \* [Same as parent volume.]

**History:** En. Sec. 4, Ch. 73, L. 1965;  
amd. Sec. 4, Ch. 12, L. 1967.

**Amendments**

The 1967 amendment substituted "The commission" for "The committee" at the beginning of the section.

**82-3505. Grants and gifts to commission—deposit and availability.** The commission may receive on behalf of the state any grant from the federal government or any grant or gift from any source and accept the same so that the title shall pass to the state. All grants, grants-in-aid, or gifts shall be deposited with the state treasurer and shall be continuously available to the commission.

**History:** En. Sec. 5, Ch. 73, L. 1965;  
amd. Sec. 5, Ch. 12, L. 1967.

**Amendments**

The 1967 amendment substituted "commission" for "committee" wherever it appears in the section.

**82-3506. Repealed.**

**Repeal**

Section 82-3506 (Sec. 6, Ch. 73, L. 1965; Sec. 6, Ch. 12, L. 1967), relating to the report of the commission on aging, was

repealed by Sec. 44, Ch. 93, Laws 1969. For present law, see secs. 82-4001 and 82-4002.

CHAPTER 36—MONTANA ARTS COUNCIL

**Section**

82-3601. Montana arts council created—purposes.

82-3602. Appointment of council members—qualifications.

82-3603. Terms of council members—chairman and vice-chairman—vacancies—expenses of members.

82-3604. Executive committee—functions.

82-3605. Employment of officers and employees—compensation.

82-3606. Duties of council.

82-3607. Gifts and donations received—deposit and use.

82-3608. Contracts for services and co-operative endeavors.

82-3609. Fund-raising drives—deposit and use of proceeds.

**82-3601. Montana arts council created—purposes.** In recognition of the increasing importance of the arts in the lives of the citizens of Montana, of the need to provide opportunity for our young people to participate in the arts and to contribute to the great cultural heritage of our state and nation, and of the growing significance of the arts as an element which makes living and vacationing in Montana desirable to the people of other states, the Montana arts council is hereby created as an agency of state government.

**History:** En. Sec. 1, Ch. 2, L. 1967.

**Cross-References**

Council continued in department of education, sec. 82A-508.

**Title of Act**

An act creating the Montana arts council and prescribing its powers and duties.

**82-3602. Appointment of council members—qualifications.** The Montana arts council shall consist of fifteen (15) members appointed by the governor, by and with the consent of the senate. In so far as possible, the governor shall appoint members from the various geographical areas of the state who have a keen interest in one or more of the arts and a willingness to devote time and effort in the public interest without compensation.

History: En. Sec. 2, Ch. 2, L. 1967.

**82-3603. Terms of council members—chairman and vice-chairman—vacancies—expenses of members.** The term of office of each member shall be five (5) years; provided, however, that of the members first appointed, five (5) shall be appointed for terms of one (1) year, five (5) for terms of three (3) years, and five (5) for terms of five (5) years. The governor shall designate a chairman and a vice-chairman from the members of the council to serve as such at the pleasure of the governor. The chairman shall be the chief executive officer of the council. Other than the chairman, no member of the council who serves a full five (5) year term shall be eligible for reappointment during a one (1) year period following the expiration of his term. Each vacancy shall be filled for the balance of the unexpired term in the same manner as the original appointment. The members of the council shall not receive any compensation for their services, but shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties as members of the council.

History: En. Sec. 3, Ch. 2, L. 1967.

**82-3604. Executive committee—functions.** The council may select an executive committee of five (5) members and delegate to the committee such functions in aid of the efficient administration of the affairs of the council as the council deems advisable.

History: En. Sec. 4, Ch. 2, L. 1967.

**82-3605. Employment of officers and employees—compensation.** The chairman may employ, and at pleasure remove, administrative officers and other employees as may be needed and fix their compensation within the amounts made available for such purposes.

History: En. Sec. 5, Ch. 2, L. 1967.

**82-3606. Duties of council.** The duties of the council shall be:

(1) To encourage throughout the state the study and presentation of the arts and to stimulate public interest and participation therein;

(2) To co-operate with public and private institutions engaged within the state in artistic and cultural activities, including but not limited to, music, theatre, dance, painting, sculpture, architecture and allied arts and crafts and to make recommendations concerning appropriate methods to encourage participation in and appreciation of the arts to meet the legitimate needs and aspirations of persons in all parts of the state;

(3) To foster public interest in the cultural heritage of our state and to expand the state's cultural resources;



(4) To encourage and assist freedom of artistic expression essential for the well-being of the arts;

(5) To report as provided in section 2 [82-4002] of this act.

**History:** En. Sec. 6, Ch. 2, L. 1967; amd. Sec. 39, Ch. 93, L. 1969.

erence to the reporting requirements of section 82-4002 for former provision requiring reports to governor and legislature in even-numbered years.

**Amendments**

The 1969 amendment substituted the ref-

**82-3607. Gifts and donations received—deposit and use.** The council may acquire, accept, receive, dispose and administer in the name of the council any gifts, donations, properties, securities, bequests and legacies that may be made to it. Moneys received by donation, gift, bequest or legacy, unless otherwise provided by the donor, shall be deposited in the earmarked revenue fund of the state treasury and used for the general operation of the council. The council is the official agency of the state to receive and disburse any funds made available by the National Foundation on the Arts.

**History:** En. Sec. 7, Ch. 2, L. 1967.

**82-3608. Contracts for services and co-operative endeavors.** The council may contract with individuals, organizations and institutions for services or co-operative endeavors furthering the objectives of the council's programs.

**History:** En. Sec. 8, Ch. 2, L. 1967.

**82-3609. Fund-raising drives—deposit and use of proceeds.** The council may engage in such fund-raising drives and public contribution campaigns as will contribute to its continued development and support. All revenues received in such manner shall be deposited in the earmarked revenue fund of the state treasury and may not be used for any purposes other than the improvement, development and operation and programs of the council.

**History:** En. Sec. 9, Ch. 2, L. 1967.

the act should be in effect from and after its passage and approval. Approved January 19, 1967.

**Effective Date**

Section 10 of Ch. 2, Laws 1967 provided

## CHAPTER 37—PLANNING AND ECONOMIC DEVELOPMENT ACT

**Section**

82-3701. Short title.

82-3702. Declaration of necessity and public policy.

82-3703. Planning and economic development commission.

82-3704. Executive head of department—appointment—compensation.

82-3705. Functions of department.

82-3706. Contracts and agreements for projects and programs—co-operation with other agencies.

82-3707. Administrators of sections of department—appointment of personnel.

82-3709. Planning board abolished—records, property and moneys transferred.

**82-3701. Short title.** This act shall be known and may be cited as the "Montana Planning and Economic Development Act of 1967."

**History:** En. Sec. 1, Ch. 19, L. 1967.

**Title of Act**

An act creating a planning and economic development commission and a department

of state government to foster planning, growth and diversification of industry and commerce; abolishing the planning board; and repealing sections 89-301 through 89-309, R. C. M. 1947.

**82-3702. Declaration of necessity and public policy.** It is hereby declared to be a necessity and the public policy of the state of Montana to promote, stimulate and encourage the planning and development of the economy of the state in order to provide for the social and economic prosperity of its citizens. Such promotion and development of industry, commerce, agriculture, labor and natural resources of the state requires that cognizance be taken of the continuing migration of people to the urban areas in search of job opportunities, and the fact that Montana is making a needed transition to a diversified economy. Community planning, greater diversification and attraction of additional industry, accelerated development of natural resources, expansion of existing industry, creation of new uses for agricultural products, greater emphasis on scientific research, development of new markets for the products of the state and the attainment of a proper balance in the over-all economic base are all necessary in order to create additional employment opportunities, increase personal income and promote the general welfare of the people of this state. The planning and economic development commission and department herein-after created shall be regarded as performing a governmental function in carrying out the provisions of this act.

**History:** En. Sec. 2, Ch. 19, L. 1967.

**82-3703. Planning and economic development commission.** There is hereby created a department of state government to be known as the "department of planning and economic development," of which the governing board shall be a commission designated as the "planning and development commission." The commission shall consist of seven (7) members, and the governor shall be an ex officio member thereof. The governor shall appoint a chairman of the commission as provided hereafter. The other five (5) members of the commission shall be appointed by the governor, shall represent various community and economic interests, and shall be residents and qualified electors of the state. On or before the effective date of this act, the governor shall appoint one (1) member whose term of office shall expire on May 1, 1968, one (1) member whose term of office shall expire on May 1, 1969, one (1) member whose term of office shall expire on May 1, 1970, one (1) member whose term of office shall expire on May 1, 1971, and one (1) member whose term of office shall expire on May 1, 1972. Except appointments to fill unexpired terms, each appointment thereafter shall be for a period of five (5) years. Members of the commission may be removed by the governor, and any vacancy caused by death, removal, disqualification or resignation shall be filled by appointment as hereinabove provided.

The commission shall select from its membership a vice-chairman, a secretary, and such other officers as it may determine to be necessary. The commission shall adopt such rules and regulations for the discharge of its

duties as it may from time to time deem necessary, and each member except the governor and the chairman of the commission shall receive the sum of fifteen dollars (\$15.00) per day for each day actually engaged in the performance of the duties of office, and shall be reimbursed for actual and necessary expenses incurred in the performance of the duties of office. The commission is empowered to exercise general supervision of the department, shall establish policy, and shall approve programs undertaken.

History: En. Sec. 3, Ch. 19, L. 1967.

**Cross-References**

Department and commission abolished  
and functions transferred, sec. 82A-902(2).

**82-3704. Executive head of department—appointment—compensation.**

The executive head of the department is the chairman of the commission, who shall be appointed by the governor, with the consent of the senate, and shall hold office at the pleasure of the governor. The chairman of the commission shall receive such compensation as is fixed by the legislature.

History: En. Sec. 4, Ch. 19, L. 1967.

**82-3705. Functions of department.** The department shall serve as the agency of state government in developing the full potential of the state's human and natural resources. To this end the department shall perform the following functions:

(A) State Planning.

(1) Develop and adopt a comprehensive plan for the physical development of the state of Montana.

(2) Make such economic and social studies as may be needed to accomplish the purposes of this act.

(3) Co-ordinate and assist regional development groups in the comprehensive development of the resources of the region to the betterment of Montana.

(4) Assemble and correlate information for the purpose of making long-range plans for economic and resource development of the state and its subdivisions relating to all of the factors which influence the development of new and existing economic enterprises, including taxes and the regulation of industry.

(5) Provide advice and assistance to Montana business and labor in the field of economic development and bring to the attention of the governor those significant problems adversely affecting economic development which may be relieved by state action.

(6) Locate and maintain information on prime sites for industrial, agricultural, mineral, forestry, commercial, and residential development and on sites of historical importance, and make recommendations for protecting and preserving such sites.

(7) Apply for, accept and administer grants from the federal government or other public or private sources to accomplish the objectives of this act, and enter into contracts, including agreements with adjoining states, with respect to planning involving adjoining states.

(8) Serve as the consultative, co-ordinating, and advisory agency for state departments, officials, and agencies in state planning and for en-



couraging and aiding local planning bodies, either directly or by securing planning assistance, consulting services and technical aid, which may include land use, demographic and economic studies and surveys, and comprehensive plans.

(B) Community Development.

(1) Co-operate with and provide technical assistance to county, municipal, state and regional planning commissions, zoning commissions, parks or recreation boards, community development groups, community action agencies, and similar agencies created for the purposes of aiding and encouraging orderly productive and co-ordinated development of the communities of the state.

(2) Assist the governor in co-ordinating the activities of state agencies which have an impact on solution of community development problems and implementation of community plans.

(3) Serve as a clearinghouse for information, data, and other materials which may be helpful or necessary to local governments to discharge their responsibilities and provide information on available federal, state financial and technical assistance.

(4) Carry out continuing studies and analyses of the problems faced by communities within the state and develop such recommendations for administrative or legislative action as appear necessary. In carrying out such studies and analyses, the department shall pay particular attention to the problems of metropolitan, suburban, and other areas in which economic and population factors are rapidly changing.

(C) Recreational Development.

(1) Exercise state responsibility for that part of recreational planning and development which is directly related to private investment in recreational facilities.

(2) Assemble and correlate information which may influence the development of recreational enterprises and disseminates the same to persons, firms or corporations with bona fide interest in constructing or maintaining recreational facilities open to the public.

(D) Economic Development.

(1) Provide co-ordinating services to aid state and local groups in the promotion of new economic enterprises and conduct publicity and promotional activities in connection therewith.

(2) Collect and disseminate information regarding the advantages of developing agricultural, recreational, commercial and industrial enterprises within this state.

(3) Serve as the state's official liaison between persons interested in locating new economic enterprises in Montana and state and local groups seeking new enterprises.

(4) Aid communities interested in obtaining new business or expanding existing business.

(5) Study and promote means of expanding markets for Montana products.

(6) Encourage and co-ordinate public and private agencies or bodies in publicizing the facilities and attractions of the state.

History: En. Sec. 5, Ch. 19, L. 1967.

**82-3706. Contracts and agreements for projects and programs—co-operation with other agencies.** The department may contract for consulting services for the purpose of undertaking and conducting planning and study projects. It may make agreements with other state agencies in order to effectuate its own research programs. It may initiate research, but when possible shall make full use of and strengthen the research resources of other state agencies, including the university system. Other state agencies are directed to provide the department with such information as will assist it in carrying out the purposes of this act.

The department shall assist and co-operate with other state agencies and officials, with official organizations of elected officials in the state, with local governments and officials, and with federal agencies and officials, in carrying out the functions and duties of the department.

It may consult with private groups and individuals, and if the department deems it desirable, hold public hearings to obtain information for the purposes of carrying out this act.

History: En. Sec. 6, Ch. 19, L. 1967.

**82-3707. Administrators of sections of department—appointment of personnel.** Each division or section of the department may be under the management of an administrator, responsible to the chairman of the commission, and such administrators and all subordinate personnel of the department shall be appointed by the chairman of the commission, with the consent of the commission.

History: En. Sec. 7, Ch. 19, L. 1967.

## **82-3708. Repealed.**

### **Repeal**

Section 82-3708 (Sec. 8, Ch. 19, L. 1967), relating to the annual report of the planning and development commission, was

repealed by Sec. 44, Ch. 93, Laws 1969. For present law, see secs. 82-4001 and 82-4002.

**82-3709. Planning board abolished—records, property and moneys transferred.** The state planning board is abolished. All records, property and moneys of the state planning board are transferred to the planning and economic development commission.

History: En. Sec. 9, Ch. 19, L. 1967.

### **Repealing Clause**

Section 10 of Ch. 19, Laws 1967 read

"Sections 89-301, 89-302, 89-303, 89-304, 89-305, 89-306, 89-307, 89-308, and 89-309, R. C. M. 1947 are repealed."

## **CHAPTER 38—POST-ENEMY-ATTACK CONTINUITY IN GOVERNMENT**

### **Section**

- 82-3801. Citation of act—constitutional basis.
- 82-3802. Succession to governorship.
- 82-3803. Succession to boards of county commissioners.
- 82-3804. Succession in city or town governing bodies.
- 82-3805. Succession for city or town executives.
- 82-3806. Provision for quorum.
- 82-3807. Moving seat of state government.
- 82-3808. Moving seat of local government.
- 82-3809. Duration of operation of act.

**82-3801. Citation of act—constitutional basis.** This act may be cited as “The Post-Enemy-Attack Continuity in Government Act” and is in implementation of section 46, article V of the Montana constitution.

**History:** En. Sec. 1, Ch. 268, L. 1967.      **Title of Act**

An act to provide for post-enemy-attack continuity in government.

**82-3802. Succession to governorship.** Following an enemy attack, the line of succession to the office of governor, as set forth in section 16, article VII of the constitution of Montana, shall be extended to members of the legislative assembly in the order of their seniority. For purposes of this section the term “seniority” means the member who has served in the legislature for the longest continuous period of time up to and including his current term. If two (2) or more members of the legislative assembly have equal seniority, the line of succession among them shall be from eldest to youngest in age.

**History:** En. Sec. 2, Ch. 268, L. 1967.

**82-3803. Succession to boards of county commissioners.** In case of a vacancy on any board of county commissioners occurring during or following an enemy attack if the judge or judges of the judicial district in which the vacancy occurs be not available to make the appointment as provided in section 4, article XVI of the Montana constitution then the district judges of all other judicial districts shall be authorized to make such appointment, provided, however, that of the available judges in the state of Montana that judge who holds court in the county seat closest to the county seat where the vacancy occurs shall be responsible for making the appointment to fill the vacancy.

**History:** En. Sec. 3, Ch. 268, L. 1967.

**82-3804. Succession in city or town governing bodies.** In the event that no members of a city or town council or commission are available following an enemy attack then the board of county commissioners of the county in which such city or town is located shall appoint successors to act in place of the unavailable members.

**History:** En. Sec. 4, Ch. 268, L. 1967.

**82-3805. Succession for city or town executives.** In the event that the executive head of any city or town is unavailable, following an enemy attack, to exercise the powers and discharge the duties of his office, then those members of the city or town council or commission available shall, by majority vote, choose a successor to act as the executive head of such city or town.

**History:** En. Sec. 5, Ch. 268, L. 1967.

**82-3806. Provision for quorum.** If, following an enemy attack, the legislature or any state or local government council, board, or commission is unable to assemble a quorum as defined by the constitution of Montana or by statute then those legislators or members of the council, board, or commission available for duty shall constitute the legislature or board,



or commission; and aforesaid quorum requirements shall be suspended; and, where the affirmative vote of a specified proportion of members for the approval of any action would otherwise be required, the same proportion of those voting thereon shall be sufficient.

History: En. Sec. 6, Ch. 268, L. 1967.

**82-3807. Moving seat of state government.** Following an enemy attack in which the seat of state government at Helena has been rendered unsuitable for use in that capacity the seat of state government may be moved to an alternate location within the boundaries of the state of Montana by proclamation of the governor. He shall consider other Montana cities in order of their population in the last federal census, giving consideration to available communications, office space and such other factors as may seem to him pertinent. Such move of the seat of government shall be effective until it is again moved by proclamation of the governor or action by the legislature.

History: En. Sec. 7, Ch. 268, L. 1967.

**82-3808. Moving seat of local government.** Following an enemy attack in which the seat of local government of any political subdivision of the state shall have been rendered unsuitable for use in that capacity, in the opinion of the governing body of that political subdivision, such seat of government may be moved by said governing body to such other location as they deem most suitable.

History: En. Sec. 8, Ch. 268, L. 1967.

**82-3809. Duration of operation of act.** The provisions of this act shall become inoperative at the time of the convening of the first legislative assembly following the emergency which originally made such provisions operative.

History: En. Sec. 9, Ch. 268, L. 1967.

#### CHAPTER 39—TELETYPEWRITER COMMUNICATIONS SYSTEM FOR LAW ENFORCEMENT

##### Section

- 82-3901. Establishment of communications system—inclusion of other state agencies.
- 82-3902. Appointment of communications committee—members—term of office—vacancies—meetings—compensation—duties.
- 82-3903. Powers of attorney general in carrying out provisions of act—operational charges—assessments.
- 82-3904. Participation in system by local and other agencies.
- 82-3905. Co-operation with federal law enforcement agencies—attorney general to enter agreements.
- 82-3906. Attorney general's report.

**82-3901. Establishment of communications system—inclusion of other state agencies.** The attorney general is hereby authorized to establish a permanent law enforcement teletypewriter communications system for the purpose of connecting federal, state, county, and city law enforcement agencies by teletype, and is further authorized to bring into the network, should he and they so desire, any department of Montana state government or its subdivisions outside of law enforcement activities when, in the

opinion of the attorney general and the state department or subdivision, such inclusion will materially aid the law enforcement agencies of the state of Montana or its subdivisions in the fight against crime.

**History:** En. Sec. 1, Ch. 1, Ex. L. 1967; amd. Sec. 1, Ch. 145, L. 1969.

#### Compiler's Notes

Chapter 145, Laws 1969 made permanent the law enforcement teletypewriter communications system. This chapter is identical to Ch. 1, Ex. Laws 1967 except for the insertion of "permanent" after "authorized to establish a" in section 1 (82-3901).

#### Title of Act

An act creating a state law enforcement teletypewriter communications system;

providing for an administrative committee to administer the provisions of the act; providing for duties of the state attorney general in administering the act; providing for charges to be established and providing for disposition of moneys collected; providing for an appropriation to carry out the provisions of the act.

#### Amendments

The 1969 amendment inserted "permanent" before "law enforcement teletypewriter communications system" near the beginning of the section.

**82-3902. Appointment of communications committee—members—term of office—vacancies—meetings—compensation—duties.** To carry out the provisions of the act, the governor shall appoint a state law enforcement teletypewriter communications committee consisting of seven (7) members, each member representing a governmental entity which is participating in the communications system. Membership in the committee shall be as follows:

- One (1) county sheriff from a county of the first class.
- One (1) county sheriff from a county other than a first class county.
- One (1) chief of police from a city of the first class.
- One (1) chief of police from a city other than a first class city.
- One (1) county commissioner from a county not otherwise represented.
- One (1) city mayor from a city not otherwise represented.
- One (1) officer or employee of a state department or agency which participates in the communications system.

The term of office of members appointed to the committee shall be as follows: Three (3) of the original appointees shall serve three (3) year terms, such terms to be determined by lot or drawing among the members present at the initial meeting of the committee, and the balance of the members of the committee shall serve for two (2) years each. Vacancies on the committee shall be filled immediately by the governor. The committee shall meet at such times and at such locations as the attorney general may require and may elect officers. Members shall serve without committee compensation since, by the nature of their duties and official capacities, they are full-time, paid, state or subdivision employees subject to compensation and certain travel and per diem allowances in connection with their positions. The committee shall advise the attorney general as to the operation of the state law enforcement teletypewriter communications system, and shall suggest such changes as determined are necessary, and the attorney general shall, within the limits of the funds available under the provisions of this act, make every effort to effectuate the changes suggested, and shall work toward refinement of the system at all levels.

**History:** En. Sec. 2, Ch. 1, Ex. L. 1967;  
amd. Sec. 2, Ch. 145, L. 1969.

**Cross-References**

Committee abolished and functions transferred, sec. 82A-1202(3).

**Amendments**

The 1969 amendment made no change in this section.

**82-3903. Powers of attorney general in carrying out provisions of act—operational charges—assessments.** To carry out the provisions of this act, the attorney general is:

(a) Authorized to purchase, lease, or otherwise acquire facilities and equipment necessary to accomplish the purposes of this act, but only after consultation with the committee, and only upon approval of the committee regarding actual physical equipment to be purchased or leased as herein provided.

(b) The attorney general is authorized to employ such personnel as may be necessary to operate such facilities, within the framework of any funds budgeted or prorated on a charge basis against participating agencies as herein identified, but only after approval of the committee.

(c) The attorney general is hereby authorized to establish a monthly operational charge for the teletypewriter communications network, exclusive of personnel services, and such charge shall be prorated among all the various agencies using the system. Such charge shall be approved by the communications committee and shall be billed monthly to the agencies, and payments made as a result of the billing shall be remitted to the attorney general and shall be deposited by him in a special account in the state treasurer's office, and the state auditor is hereby authorized to draw warrants on this account upon request of the attorney general when such moneys are needed to pay any of the costs of keeping the system operative. A strict accounting shall be kept of all receipts and disbursements and shall be available as a matter of record to members of the appropriations committee of the house of representatives as they may require in the performance of their duties. Law enforcement agencies, other than state of Montana or any of its subdivisions, that become ninety (90) days delinquent in payment of any fees approved and assessed hereunder shall be notified that they will be removed from the network, and the committee herein provided shall take the necessary steps to carry out this provision.

(d) A special assessment pro rata shall be made against all participating agencies for personnel necessary to assist in the operation at one central location or key point at which there is a federal intertie, and this assessment shall be made monthly as is the operational assessment, and the same shall be transmitted and deposited and drawn by warrant as are other warrants as previously provided under (c) above, except that the assessment shall not be levied against the one central station for which the assessment is made. Assessments made under the provisions of this act shall be approved by the committee.

**History:** En. Sec. 3, Ch. 1, Ex. L. 1967;  
amd. Sec. 3, Ch. 145, L. 1969.

**Amendments**

The 1969 amendment made no change in this section.



**82-3904. Participation in system by local and other agencies.** Any county, city, or other law enforcement agency may, with approval of the committee and the attorney general, connect to the system and participate in it upon payment of, or agreement to pay, those costs established by the committee.

**History:** En. Sec. 4, Ch. 1, Ex. L. 1967;  
amd. Sec. 4, Ch. 145, L. 1969.

**Amendments**

The 1969 amendment made no change in this section.

**82-3905. Co-operation with federal law enforcement agencies—attorney general to enter agreements.** The attorney general is hereby directed to contact federal law enforcement agencies or officials relative to federal cost sharing in the teletypewriter communications system, and if such funds are available from federal sources, the attorney general is hereby authorized to sign agreements with the federal agencies, subject to approval of the communications committee, and any federal funds received in any biennium for which Montana funds have been appropriated shall be deposited to the credit of the communication fund and shall be used, if at all possible, to reduce the spending of moneys as herein appropriated from the general fund.

**History:** En. Sec. 5, Ch. 1, Ex. L. 1967;  
amd. Sec. 5, Ch. 145, L. 1969.

**Amendments**

The 1969 amendment made no change in this section.

**82-3906. Attorney general's report.** The attorney general shall prepare a report in detail covering the operations of the communications network, the actions of the committee, the accounting of all moneys received and expended, and the need to expand or improve the system, and shall submit such report to the appropriations committee of every legislative assembly at the time funds are requested for the administration of this act.

**History:** En. Sec. 6, Ch. 1, Ex. L. 1967;  
amd. Sec. 6, Ch. 145, L. 1969.

**Appropriation**

Section 7 of Ch. 1, Ex. Laws 1967 appropriated money for the 1967-1969 biennium.

**Amendments**

The 1969 amendment made no change in this section.

CHAPTER 40—ANNUAL REPORTS TO GOVERNOR

Section

82-4001. Definitions.

82-4002. Annual reports by state agencies—contents—public inspection—governor's duties—pamphlets—copies.

**82-4001. Definitions.** As used in this act, unless the context clearly indicates otherwise:

(1) "State agency" means any elective official, office, department, board, bureau, or commission which is of the executive branch of state government.

(2) "Elective official" means the superintendent of public instruction, board of railroad commissioners, secretary of state, attorney general, state auditor, and state treasurer.

**History:** En. Sec. 1, Ch. 93, L. 1969.

**Title of Act**

An act to establish uniform reporting requirements for all state executive agencies; amending sections 1-202, 3-106, 3-2914, 4-227, 5-902, 12-404, 26-124, 27-306, 32-2409, 41-803, 41-906, 44-403, 46-2306, 60-127, 62-504, 66-109, 66-408 66-513, 66-904,

66-1009, 66-1311, 66-1410, 66-1504, 66-2203, 66-2334, 69-4106, 70-111, 71-209, 75-107, 77-120, 80-1405, 81-1411, 82-111, 82-302, 82-1002, 82-1519, 82-3606, 87-120, 92-118, 94-9824, and 82-1916, R. C. M. 1947; and repealing sections 40-2712, 41-1607, 41-1608, 46-106, 46-242, 66-2106, 72-138, 75-1309, 75-1310, 81-206, 81-1702.4, 82-804.3, 82-2704, 82-3506, and 82-3708, R. C. M. 1947.

**82-4002. Annual reports by state agencies—contents—public inspection—governor's duties—pamphlets—copies.** (1) Before September 1 of each year, each state agency shall submit a written report to the governor of its activities during the immediately preceding fiscal year.

(2) Each report shall contain information prescribed by the governor describing fully the activities of the state agency. Reports shall contain recommendations from each state agency for improvements in programs administered by it.

(3) State agency reports shall be filed in the governor's office and are open for inspection by any person.

(4) From the reports submitted to him the governor shall:

- (a) delete extraneous or duplicated data;
- (b) standardize the presentation of data to the extent feasible and desirable;
- (c) request pertinent additional information he wishes included in the report;

(d) prepare a report for submission to the legislative assembly before the fifth legislative day of any regular session.

(5) Except as provided in subsection (6) of this section, the governor may authorize the publication of a state agency report in pamphlet form. The report in pamphlet form shall be published and distributed by the state agency responsible for reporting.

(6) An elective official may publish an annual report in pamphlet form, in addition to the report to the governor required by subsection (1) of this section, without permission from the governor.

(7) Copies of each report published as provided in subsections (4), (5) and (6) of this section shall be distributed as follows:

- (a) two (2) copies to the secretary of state;
- (b) two (2) copies to the legislative council;
- (c) two (2) copies to the legislative auditor;
- (d) one (1) copy to each member of the legislative assembly;
- (e) two (2) copies to the director of the budget;
- (f) two (2) copies to the librarian of the state historical society;
- (g) at least four (4) copies to the state publications distribution center of the state library and additional copies as requested by the state library;

(h) additional distribution in the discretion of the governor or state agency.

**History:** En. Sec. 2, Ch. 93, L. 1969;  
amd. Sec. 1, Ch. 134, L. 1971.

**Amendments**

The 1971 amendment substituted "each

year" for "each even-numbered year" in subsection (1); substituted "fiscal year" for "fiscal biennium" at the end of subsection (1); and substituted "an annual report" for "a biennial report" in subsection (6).

#### CHAPTER 41—PUBLIC CONTRACTOR'S DEPOSITS FOR WITHDRAWAL OF RETAINED PAYMENTS

##### Section

- 82-4101. Contractor may withdraw funds retained by state upon depositing certain obligations with state treasurer—obligations that may be deposited.  
 82-4102. Treasurer authorized to contract for custodial care and servicing of deposited obligations.  
 82-4103. Interest or income on obligations to be paid to contractor—coupon bonds.  
 82-4104. Priority of deductions from retained payments and proceeds of deposited obligation.

**82-4101. Contractor may withdraw funds retained by state upon depositing certain obligations with state treasurer—obligations that may be deposited.** The contractor under any contract heretofore or hereafter made or awarded by the state of Montana, or any department, agency or political subdivision thereof, including any contract for the construction, improvement, maintenance or repair of any road or highway or the appurtenances thereto, may, from time to time, withdraw the whole or any portion of the sums otherwise due to the contractor under such contract which are retained by the state of Montana, or any department, agency or political subdivision thereof, pursuant to the terms of such contract provided the contractor shall deposit with the treasurer of the state of Montana (1) United States treasury bonds, United States treasury notes, United States treasury certificates of indebtedness or United States treasury bills; or (2) bonds or notes of the state of Montana; or (3) bonds of any political subdivision of the state of Montana, of a market value not exceeding par, at the time of deposit; or certificates of deposit drawn and issued by a national banking association located in the state of Montana or by any banking corporation incorporated under the laws of the state of Montana and such deposited obligations shall be at least equal in value to the amount so withdrawn from payments retained under such contract.

**History:** En. Sec. 1, Ch. 194, L. 1969; amd. Sec. 1, Ch. 101, L. 1971.

##### Title of Act

An act to allow contractors under contracts with the state of Montana, or any department, agency or political subdivision thereof, to deposit certain governmental obligations with the treasurer of the state of Montana in substitution for that portion of the payments otherwise due to such contractors under state contracts which are retained by the state of Mon-

tana, or any department, agency or political subdivision thereof, pursuant to the terms of such state contracts.

##### Amendments

The 1971 amendment inserted "or certificates of deposit drawn and issued by a national banking association located in the state of Montana or by any banking corporation incorporated under the laws of the state of Montana" near the end of the section; and made a minor change in phraseology.

**82-4102. Treasurer authorized to contract for custodial care and servicing of deposited obligations.** The treasurer of the state of Montana shall have the power to enter into a contract or agreement with any national bank, state bank, trust company or safe deposit company located in



the state of Montana, designated by the contractor, after notice to the owner and surety, to provide for the custodial care and servicing of any obligations deposited with him pursuant to this act. Such services shall include the safekeeping of said obligations and the rendering of all services required to effectuate the purposes of this act.

**History:** En. Sec. 2, Ch. 194, L. 1969.

**82-4103. Interest or income on obligations to be paid to contractor—coupon bonds.** The treasurer of the state of Montana or any national bank, state bank, trust company or safe deposit company located in the state of Montana, designated by the contractor to serve as custodian for the obligations pursuant to section 2 [82-4102] hereof, shall collect all interest or income when due on the obligations so deposited and shall pay the same, when and as collected, to the contractor who deposited the obligation. If deposited in the form of coupon bonds, the treasurer of the state of Montana shall deliver each such coupon as it matures to the contractor.

**History:** En. Sec. 3, Ch. 194, L. 1969.

**82-4104. Priority of deductions from retained payments and proceeds of deposited obligation.** Any amount deducted by the state of Montana, or by any department, agency or political subdivision thereof, pursuant to the terms of a contract, from the retained payments otherwise due to the contractor thereunder, shall be deducted first from that portion of the retained payments for which no obligation has been substituted, then from the proceeds of any deposited obligation. In the latter case, the contractor shall be entitled to receive the interest, coupons or income only from those obligations which remain on deposit after such amount has been deducted.

**History:** En. Sec. 4, Ch. 194, L. 1969.

#### CHAPTER 42—ADMINISTRATIVE PROCEDURE ACT

##### Section

- 82-4201. Short title.
- 82-4202. Definitions.
- 82-4203. Rules describing agency organization and procedures—public inspection of rules—model rules.
- 82-4204. Adoption—amendment or repeal of rules—emergency rules.
- 82-4205. Filing of rules—effective date of rules.
- 82-4206. Publication and distribution of rules and notices.
- 82-4207. Petition for adoption of rules.
- 82-4208. Judicial notice of rules.
- 82-4209. Notice—hearing—record.
- 82-4210. Rules of evidence—official notice.
- 82-4211. Hearing examiners—conduct of hearings—disqualification of hearing examiners and agency members.
- 82-4212. Examination of evidence by agency—proposed orders.
- 82-4213. Final orders—notification.
- 82-4214. Ex parte consultations.
- 82-4215. Licenses.
- 82-4216. Judicial review of contested cases.
- 82-4217. Appeals.
- 82-4218. Declaratory rulings by agencies.
- 82-4219. Declaratory judgments on validity or application of rules.
- 82-4220. Subpoenas and enforcement—compelling testimony.
- 82-4221. Representation.

- 82-4222. Service.
- 82-4223. Construction and effect.
- 82-4224. Repeal of inconsistent provisions.
- 82-4225. Severability.

### Title and Definitions

**82-4201. Short title.** This act shall be known and may be cited as the "Montana Administrative Procedure Act."

**History:** En. Sec. 1, Ch. 2, Ex. L. 1971.

#### Title of Act.

An act prescribing uniform procedures for state administrative agencies, including: requirement for adoption of procedural rules; procedures for adoption, amendment or repeal of rules, including emergency rules; filing and publication of rules; judicial notice of rules; notice and hearing requirements for contested

cases; procedures for contested case hearings; procedures for decision making in contested cases; judicial review of contested case decisions; declaratory rulings by agencies; declaratory judgments by courts regarding the validity and application of agency rules; subpoenas, subpoena enforcement and compelling testimony for agency proceedings; and right to representation in agency proceedings; to provide an effective date.

**82-4202. Definitions.** For purposes of this act:

(1) "Agency" means any board, bureau, commission, department, authority or officer of the state government authorized by law to make rules and to determine contested cases, except that the provisions of this act shall not apply to the following:

- (a) the legislature and any branch, committee or officer thereof;
- (b) the judicial branches and any committee or officer thereof;
- (c) the governor, except that an agency otherwise covered by this act shall not be exempt because the governor has been designated as a member thereof;

(d) the state military establishment and agencies concerned with civil defense and recovery from hostile attack;

(e) the state board of pardons, except that said board shall be subject to the requirements of section 3 [82-4203] and 5 [82-4205] of this act and its rules shall be published in the Montana administrative code and register;

(f) the supervision and administration of any penal, mental, medical or eleemosynary institution with regard to the admission, release, institutional supervision, custody, control, care or treatment of inmates, prisoners or patients;

(g) the administration and management of educational institutions;

(h) the financing, construction and maintenance of public works.

(2) "Rule" means each agency regulation, standard or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of an agency. The term includes the amendment or repeal of a prior rule, but does not include:

(a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public;

(b) declaratory rulings issued pursuant to section 18 [82-4218] of this act;

(c) intra-agency memoranda;

(d) rules relating to the use of public works, facilities, streets and highways, when the substance of such rules is indicated to the public by means of signs or signals;

(e) seasonal rules adopted annually relating to hunting, fishing and trapping when there is a statutory requirement for the publication of such rules, and rules adopted annually relating to the seasonal recreational use of lands and waters owned or controlled by the state when the substance of such rules is indicated to the public by means of signs or signals;

(f) rules relating to personnel standards, job classifications or salary ranges for agency employees;

(g) uniform rules adopted pursuant to interstate compact, except that such rules shall be filed in accordance with section 10 [82-4210] of this act and shall be published in the Montana administrative code and register.

(3) "Contested case" means any proceeding before an agency in which a determination of legal rights, duties or privileges of a party is required by law to be made after an opportunity for hearing. The term includes, but is not restricted to, rate making, price fixing and licensing.

(4) "License" includes the whole or part of any agency permit, certificate, approval, registration, charter or other form of permission required by law, but does not include a license required solely for revenue purposes.

(5) "Licensing" includes any agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation or amendment of a license.

(6) "Party" means any person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party; but nothing herein shall be construed to prevent an agency from admitting any person or agency as a party for limited purposes.

(7) "Person" means any individual, partnership, corporation, association, governmental subdivision or public organization of any character other than an agency.

History: En. Sec. 2, Ch. 2, Ex. L. 1971.

#### Rule Making

**82-4203. Rules describing agency organization and procedures—public inspection of rules—model rules.** (1) In addition to other rule-making requirements imposed by law, each agency shall:

(a) Adopt as a rule a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information or make submissions or requests.

(b) Adopt rules of practice, not inconsistent with statutory provisions, setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the agency.

(c) Make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted or used by the agency in the discharge of its functions.



(d) Upon request of any person or agency, provide a copy of any rule. Unless otherwise provided by statute, an agency may require the payment of the cost of providing such copies.

(2) No agency rule shall be valid or effective against any person or party whose rights have been substantially prejudiced by an agency's failure to comply with the public inspection requirement herein.

(3) The attorney general shall prepare, as soon as is practicable after the passage of this act, a model form for a rule describing the organization of agencies and model rules of practice for agencies to use as a guide in fulfilling the requirements of section 3 (1) [82-4203 (1)]. The attorney general shall add to, amend or revise the model rules from time to time as he shall deem necessary for the proper guidance of agencies. The model rules, and additions, amendments or revisions thereto, shall be appropriate for the use of as many agencies as is practicable and shall be filed with the secretary of state and provided to any agency upon request. The adoption by an agency of all or part of the model rules shall not relieve the agency from following the rule-making procedures required by this act.

**History: En. Sec. 3, Ch. 2, Ex. L. 1971.**

**82-4204. Adoption—amendment or repeal of rules—emergency rules.**

(1) Prior to the adoption, amendment or repeal of any rule, the agency shall:

(a) Give written notice of its intended action. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, and the time when, place where, and manner in which interested persons may present their views thereon. The notice shall be filed with the secretary of state for publication in the Montana administrative register as provided in section 6 (2) [82-4206 (2)] of this act and mailed to persons who have made timely requests to the agency for advance notice of its rule-making proceedings. The notice shall be published and mailed at least twenty (20) days in advance of the agency's intended action. If any statute shall provide for a different method of publication, the affected agency shall comply with the statute in addition to the requirements contained herein. However, in no case shall the notice period be less than twenty (20) days.

(b) Afford interested persons reasonable opportunity to submit data, views or arguments, orally or in writing. In the case of substantive rules, opportunity for oral hearing shall be granted if requested by either ten per cent (10%) or twenty-five (25) of the persons who will be directly affected by the proposed rule, by a governmental subdivision or agency or by an association having not less than twenty-five (25) members who will be directly affected. Contested case procedures need not be followed in hearings held pursuant to this section. Where a hearing is otherwise required by statute, nothing herein shall be deemed to alter that requirement. The agency shall consider fully written and oral submissions respecting the proposed rule. Upon adoption of a rule, an agency, if requested to do so by an interested person either prior to adoption or within thirty (30) days thereafter, shall issue a concise statement of the principal

reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption.

(2) If an agency finds that an imminent peril to the public health, safety or welfare requires adoption of a rule upon fewer than twenty (20) days' notice and states in writing its reasons for that finding, it may proceed, without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule. The rule may be effective for a period not longer than one hundred and twenty (120) days, but the adoption of an identical rule under subsections (1) (a) and (1) (b) of this section is not precluded. The sufficiency of the reasons for a finding of imminent peril to the public health, safety or welfare shall be subject to judicial review.

(3) No rule adopted after the effective date of this act shall be valid unless adopted in substantial compliance with subsections (1) and (2) of this section.

(4) An agency may use informal conferences and consultations as a means of obtaining the viewpoints and advice of interested persons with respect to contemplated rule making. An agency may also appoint committees of experts or interested persons or representatives of the general public to advise it with respect to any contemplated rule making. The powers of the committees shall be advisory only. Nothing herein shall relieve the agency from following rule-making procedures required by this act.

(5) Rules shall not unnecessarily repeat statutory language. Whenever it is necessary to refer to statutory language in order to convey the meaning of a rule interpreting the language, the reference shall clearly indicate that portion of the language which is statutory and the portion which is amplification of the language. Each rule shall include a citation of authority pursuant to which it, or any part thereof, is adopted.

(6) Each agency shall at least annually review its rules to determine if any new rule should be adopted or any existing rule should be modified or repealed.

**History:** En. Sec. 4, Ch. 2, Ex. L. 1971.

**82-4205. Filing of rules—effective date of rules.** (1) On or before the 60th day following the effective date of this act, each agency shall file with the secretary of state a certified copy of each rule adopted by it on or before the effective date of this act and remaining in effect. Any rule not so filed shall be deemed to have been abrogated by the agency and shall be void and of no effect.

(2) Each agency shall file with the secretary of state a certified copy of each rule adopted by it subsequent to the effective date of this act. Each rule shall become effective ten (10) days after publication in the Montana administrative register or code as provided in section 6 [82-4206] of this act, except that:

(a) If a later date is required by statute or specified in the rule, the later date shall be the effective date.

(b) Subject to applicable constitutional or statutory provisions, an emergency rule shall become effective immediately upon filing with the

secretary of state, or at a stated date less than ten (10) days following publication in the Montana administrative code or register, if the agency finds that this effective date is necessary because of imminent peril to the public health, safety or welfare. The agency's finding and a brief statement of reasons therefor shall be filed with the rule. The agency shall take appropriate measures to make emergency rules known to every person who may be affected by them.

(3) The secretary of state may prescribe a format, style and arrangement for rules which are filed pursuant to this act and may refuse to accept the filing of any rule that is not in substantial compliance therewith. He shall keep and maintain a permanent register of all rules filed (including superseded and repealed rules), which shall be open to public inspection, and shall provide copies of any rule upon request of any person or agency. Unless otherwise provided by statute, the secretary of state may require the payment of the cost of providing such copies.

**History:** En. Sec. 5, Ch. 2, Ex. L. 1971.

**82-4206. Publication and distribution of rules and notices.** (1) The secretary of state shall, as soon as is practicable after the effective date of this act, compile, index and publish all rules filed pursuant to this act in a publication which shall be known as the Montana administrative code (herein referred to as the code). The code shall be printed or otherwise duplicated, in looseleaf form. The secretary of state shall revise the code, or any part thereof, as often as he deems necessary.

(2) The secretary of state shall each month compile and publish the Montana administrative register (herein referred to as the register). The register shall contain two (2) sections, a rules section and a notice section.

(a) The rules section of the register shall contain all rules filed with the secretary of state since the compilation and publication of the preceding issue of the register, and in the case of the first issue, since the effective date of this act, except that nothing herein shall require that rules filed pursuant to section 5 (1) [82-4205 (1)] be published in the register. This section of the register shall be printed or duplicated in the same style as the code and shall be set up so as to permit changes to be inserted as pages in the code in lieu of the pages containing superseded material and to permit additions to the code.

(b) The notice section of the register shall contain all rule-making notices filed with the secretary of state pursuant to section 4 [82-4204] of this act since the compilation and publication of the preceding register, and in the case of the first issue of the register, since the effective date of this act. This section shall be printed or duplicated in such manner as to make it easily distinguishable from the rules section of the register and so that separate copies of the notice section can be provided to any person upon request to the secretary of state. The secretary of state may require the payment of the cost of providing such copies.

(c) Each issue of the register shall contain a title page with the name "Montana administrative register," the issue number and date of the register, and a table of contents. Each page of the register shall contain the issue number and date of the register of which it is a part. The



secretary of state may include in the register instructions or information to help the user in correctly making insertions or deletions in the code and to keep the code current.

(3) The secretary of state, with the consent of the adopting agency, may omit from the code or register any rule the publication of which would be unduly cumbersome, expensive or otherwise inexpedient, if the rule in printed or duplicated form is made available on application to the agency, and if the code or register contains a notice stating the general subject matter of the omitted rule and stating how a copy may be obtained.

(4) The code shall be arranged, indexed and printed or duplicated in such manner as to permit separate publication of portions thereof relating to individual agencies. An agency may make arrangements with the secretary of state for the printing of as many copies of such separate publications as it may require. The cost of any such separate publications shall be paid by the agency.

(5) The secretary of state shall distribute copies of the code, revisions thereto and the register without charge to the following:

Attorney general, one (1) copy;

Clerk of each court of record of this state, one (1) copy;

Clerk of United States district court for the district of Montana, one (1) copy;

Clerk of United States court of appeals for the ninth circuit, one (1) copy;

Each county clerk of this state, for use of county officials and the public, one (1) copy;

State law library, one (1) copy;

State historical society, one (1) copy;

Each unit of the university of Montana, one (1) copy;

Law library of the university of Montana, one (1) copy;

Montana legislative council, three (3) copies;

Library of congress, one (1) copy;

State law library, for such exchanges as it may establish with libraries of other states, not to exceed fifty (50) copies;

Law library of the university of Montana, for such exchanges as it may establish with institutions of higher education in other states, not to exceed fifty (50) copies.

The secretary of state, clerk of each court of record in the state, clerk of each county in the state and the librarians for the state law library and the university of Montana law library shall maintain a complete, current set of the code, including revisions thereto and additions or changes published in the register. Such persons shall also maintain a file of rule-making notices published in the register during the preceding two (2) years. The secretary of state shall also maintain a permanent register of rule-making notices.

(6) The secretary of state shall make copies of and subscriptions to the code, revisions thereto and the register available to any person at prices fixed to cover publication and mailing costs.

(7) The secretary of state shall determine the cost of supplying copies of the code, revisions thereto and the register. Such cost shall be

the approximate cost of printing or duplicating and mailing. However, a uniform price per page or group of pages may be established without regard to differences in cost of printing different parts of the code, revisions thereto and the register.

(8) All fees collected by the secretary of state shall be deposited to the general fund.

**History:** En. Sec. 6, Ch. 2, Ex. L. 1971.

**82-4207. Petition for adoption of rules.** An interested person may petition an agency requesting the promulgation, amendment or repeal of a rule. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, consideration and disposition. Within sixty (60) days after submission of a petition, the agency either shall deny the petition in writing (stating its reasons for the denial) or shall initiate rule-making proceedings in accordance with section 4 [82-4204] of this act.

**History:** En. Sec. 7, Ch. 2, Ex. L. 1971.

**82-4208. Judicial notice of rules.** The courts shall take judicial notice of any rule filed and published under the provisions of this act.

**History:** En. Sec. 8, Ch. 2, Ex. L. 1971.

#### Contested Cases

**82-4209. Notice — hearing — record.** (1) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice.

(2) The notice shall include:

(a) A statement of the time, place and nature of the hearing.

(b) A statement of the legal authority and jurisdiction under which the hearing is to be held.

(c) A reference to the particular sections of the statutes and rules involved.

(d) A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter upon application a more definite and detailed statement shall be furnished.

(3) Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

(4) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

(5) The record in a contested case shall include:

(a) All pleadings, motions, intermediate rulings.

(b) All evidence received or considered, including a stenographic record of oral proceedings when demanded by a party.

- (c) A statement of matters officially noticed.
- (d) Questions and offers of proof, objections, and rulings thereon.
- (e) Proposed findings and exceptions.
- (f) Any decision, opinion or report by the hearing examiner or agency member presiding at the hearing.
- (g) All staff memoranda or data submitted to the hearing examiner or members of the agency as evidence in connection with their consideration of the case.
- (6) The stenographic record of oral proceedings or any part thereof shall be transcribed on request of any party. Unless otherwise provided by statute, the cost of the transcription shall be paid by the requesting party.
- (7) Findings of facts shall be based exclusively on the evidence and on matters officially noticed.

**History:** En. Sec. 9, Ch. 2, Ex. L. 1971.

**82-4210. Rules of evidence—official notice.** (1) Except as otherwise provided by statute relating directly to an agency, agencies shall be bound by common law and statutory rules of evidence. Objections to evidentiary offers may be made and shall be noted in the record. When a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

(2) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original.

(3) A party shall have the right to conduct cross-examinations required for a full and true disclosure of facts, including the right to cross-examine the author of any document prepared by or on behalf of or for the use of the agency and offered in evidence.

(4) Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of evidence.

**History:** En. Sec. 10, Ch. 2, Ex. L. 1971.

**82-4211. Hearing examiners—conduct of hearings—disqualification of hearing examiners and agency members.** (1) An agency shall have authority to appoint hearing examiners for the conduct of hearings in contested cases.

(2) Agency members or hearing examiners presiding over hearings shall be authorized to administer oaths or affirmations; issue subpoenas pursuant to section 20 [82-4220] of this act; provide for the taking of testimony by deposition; regulate the course of hearings, including setting the time and place for continued hearings and fixing the time for filing of briefs or other documents; and direct parties to appear and confer to



consider simplification of the issues by consent of the parties. All testimony shall be given under oath or affirmation.

(3) A hearing examiner or agency member may at any time disqualify himself. On the filing in good faith of a timely and sufficient affidavit of personal bias or other disqualification of a hearing examiner or agency member, the agency shall determine the matter as a part of the record and decision in the case.

**History:** En. Sec. 11, Ch. 2, Ex. L. 1971.

**82-4212. Examination of evidence by agency—proposed orders.** When in a contested case a majority of the officials of the agency who are to render the final decision have not heard the case or read the record, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made until a proposal for decision is served upon the parties and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral argument to the officials who are to render the decision. The proposal for decision shall contain a statement of the reasons therefor and of each issue of fact or law necessary to the proposed decision, prepared by the person who conducted the hearing or one who has read the record. The parties may waive compliance with this section by written stipulation.

**History:** En. Sec. 12, Ch. 2, Ex. L. 1971.

**82-4213. Final orders—notification.** (1) A final decision or order adverse to a party in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Parties shall be notified either personally or by mail of any decision or order. Upon request, a copy of the decision or order shall be delivered or mailed forthwith to each party and to his attorney of record.

(2) Each agency shall index and make available for public inspection all final decisions and orders, including declaratory rulings under section 18 [82-4218], issued after the effective date of this act. No such agency decision or order shall be valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been made available for public inspection as herein required. This provision is not applicable in favor of any person or party who has actual knowledge thereof or when a state statute or federal statute or regulation prohibits public disclosure of the contents of a decision or order.

**History:** En. Sec. 13, Ch. 2, Ex. L. 1971.

**82-4214. Ex parte consultations.** Unless required for disposition of ex parte matters authorized by law, the person or persons who are charged with the duty of rendering a decision or to make findings of fact and conclusions of law in a contested case, after issuance of notice of hearing,

shall not communicate with any party or his representative in connection with any issue of fact or law in such case except upon notice and opportunity for all parties to participate.

**History:** En. Sec. 14, Ch. 2, Ex. L. 1971.

**82-4215. Licenses.** (1) When the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation or amendment of a license is required by law to be preceded by notice and opportunity for hearing, the provisions of this act concerning contested cases apply.

(2) When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(3) No revocation, suspension, annulment, withdrawal or amendment of any license is lawful unless, prior to the institution of agency proceedings, the agency gave notice by mail to the licensee of facts or conduct which warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license. If the agency finds that public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

**History:** En. Sec. 15, Ch. 2, Ex. L. 1971.

**82-4216. Judicial review of contested cases.** (1) A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review under this act. This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by statute. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.

A party who proceeds before an agency under the terms of a particular statute shall not be precluded from questioning the validity of that statute on judicial review, but such party may not raise any other question not raised before the agency, unless it is shown to the satisfaction of the court that there was good cause for failure to raise the question before the agency.

(2) Proceedings for review shall be instituted by filing a petition in district court within thirty (30) days after service of the final decision of the agency, or if a rehearing is requested, within thirty (30) days after the decision thereon. Except as otherwise provided by statute, the petition shall be filed in the district court for the county where the petitioner resides or has his principal place of business, or where the agency main-

tains its principal office. Copies of the petition shall be promptly served upon the agency and all parties of record.

The petition shall include a concise statement of the facts upon which jurisdiction and venue are based, a statement of the manner in which the petitioner is aggrieved and the ground or grounds specified in subsection 7 of this section upon which the petitioner contends he is entitled to relief. The petition shall demand the relief to which the petitioner believes he is entitled, and the demand for relief may be in the alternative.

(3) Unless otherwise provided by statute, the filing of the petition shall not stay enforcement of the agency's decision. The agency may grant, or the reviewing court may order, a stay upon terms which it deems proper.

(4) Within thirty (30) days after the service of the petition, or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

(5) If, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

(6) The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the agency, not shown in the record, proof thereof may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

(7) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record;
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or



(g) because findings of fact, upon issues essential to the decision, were not made although requested.

History: En. Sec. 16, Ch. 2, Ex. L. 1971.

**82-4217. Appeals.** An aggrieved party may obtain review of a final judgment of a district court under this act by appeal to the supreme court within sixty (60) days after entry of judgment. Such appeal shall be taken in the manner provided by law for appeals from district courts in civil cases. Unless otherwise provided by statute or unless the agency has granted a stay through the completion of the judicial review process;

(1) If appeal is taken from a judgment of the district court affirming an agency decision, the agency decision shall not be stayed except upon order of the supreme court; except that, in cases where a stay is in effect at the time of the filing of notice of appeal, the stay shall be continued by operation of law for twenty (20) days from the date of filing of the notice.

(2) If appeal is taken from a judgment of the district court reversing or modifying an agency decision, the agency decision shall be stayed pending final determination of the appeal unless the supreme court orders otherwise.

History: En. Sec. 17, Ch. 2, Ex. L. 1971.

#### General Provisions

**82-4218. Declaratory rulings by agencies.** Each agency shall provide by rule for the filing and prompt disposition of petitions for declaratory rulings as to the applicability of any statutory provision or of any rule or order of the agency. A declaratory ruling, or the refusal to issue such a ruling, shall be subject to judicial review in the same manner as decisions or orders in contested cases.

History: En. Sec. 18, Ch. 2, Ex. L. 1971.

**82-4219. Declaratory judgments on validity or application of rules.** The validity or application of a rule may be determined in an action for declaratory judgment if it is found that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff. The action may be brought in the district court for the county in which the plaintiff resides or has his principal place of business, or in which the agency maintains its principal office. The agency shall be made a party to the action. A declaratory judgment may be rendered whether or not the plaintiff has requested the agency to pass upon the validity or applicability of the rule in question.

History: En. Sec. 19, Ch. 2, Ex. L. 1971.

**82-4220. Subpoenas and enforcement—compelling testimony.** (1) An agency conducting any proceeding subject to this act shall have the power to require the furnishing of such information, the attendance of such witnesses, and the production of such books, records, papers, documents and

other objects as may be necessary and proper for the purposes of the proceeding. In furtherance of this power, an agency upon its own motion may, and upon request of any party appearing in a contested case shall, issue subpoenas for witnesses or subpoenas duces tecum. The method for service of subpoenas, witness fees and mileage shall be the same as required in civil actions in the district courts of the state. Except as otherwise provided by statute, witness fees and mileage shall be paid by the party at whose request the subpoena was issued.

(2) In case of disobedience of any subpoena issued and served under this section or of the refusal of any witness to testify as to any material matter with regard to which he may be interrogated in a proceeding before the agency, the agency may apply to any district court in the state for an order to compel compliance with the subpoena or the giving of testimony. If the agency fails or refuses to seek enforcement of a subpoena issued at the request of a party, or to compel the giving of testimony deemed material by a party, the party may make such application. The court shall hear the matter as expeditiously as possible. If the disobedience or refusal is found to be unjustified, the court shall enter an order requiring compliance. Disobedience of such order shall be punishable by contempt of court in the same manner and by the same procedures as is provided for like conduct committed in the course of civil actions in district courts. If another method of subpoena enforcement or compelling testimony is provided by statute, it may be used as an alternative to the method provided for in this section.

History: En. Sec. 20, Ch. 2, Ex. L. 1971.

**82-4221. Representation.** Any person compelled to appear in person or who voluntarily appears before any agency or representative thereof shall be accorded the right to be accompanied, represented and advised by counsel. In a proceeding before an agency, every party shall be accorded the right to appear in person or by or with counsel but this act shall not be construed as requiring an agency to furnish counsel to any such person.

History: En. Sec. 21, Ch. 2, Ex. L. 1971.

**82-4222. Service.** Except where a statute expressly provides to the contrary, service in all agency proceedings subject to the provisions of this act and in proceedings for judicial review thereof, shall be as prescribed for civil actions in the district courts.

History: En. Sec. 22, Ch. 2, Ex. L. 1971.

**82-4223. Construction and effect.** Nothing in this act shall be deemed to limit or repeal requirements imposed by statute or otherwise recognized law. No subsequent legislation shall be deemed to supersede or modify any provision of this act, whether by implication or otherwise, except to the extent that such legislation shall do so expressly.

History: En. Sec. 23, Ch. 2, Ex. L. 1971.

**82-4224. Repeal of inconsistent provisions.** All laws or parts of laws in conflict herewith are hereby repealed to the extent of such conflict.

**History:** En. Sec. 24, Ch. 2, Ex. L. 1971.

**82-4225. Severability.** The provisions of this act are severable, and if any part of provision thereof shall be held void the decision of the court so holding shall not affect or impair any of the remaining part of provisions of this act.

**History:** En. Sec. 25, Ch. 2, Ex. L. 1971. read "Time of taking effect. This act shall take effect on December 31, 1972, except that pending proceedings shall not be affected."

**Effective Date**

Section 26 of Ch. 2, Ex. Laws 1971



## TITLE 82A—STATE REORGANIZATION OF EXECUTIVE DEPARTMENT

### Chapter

1. General provisions, 82A-101 to 82A-123.
2. Department of administration, 82A-201 to 82A-213.
3. Department of agriculture, 82A-301 to 82A-305.
4. Department of business regulation, 82A-401 to 82A-406.
5. Department of education, 82A-501 to 82A-510.
6. Department of health and environmental sciences, 82A-601 to 82A-609.
7. Department of highways, 82A-701 to 82A-708.
8. Department of institutions, 82A-801 to 82A-807.
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10. Department of labor and industry, 82A-1001 to 82A-1010.
11. Department of state lands, 82A-1101 to 82A-1104.
12. Department of law enforcement and public safety, 82A-1201 to 82A-1208.
13. Department of livestock, 82A-1301 to 82A-1305.
14. Department of military affairs, 82A-1401 to 82A-1404.
15. Department of natural resources and conservation, 82A-1501 to 82-1511.
16. Department of professional and occupational licensing, 82A-1601 to 82A-1606.
17. Department of public service regulation, 82A-1701 to 82A-1703.
18. Department of revenue, 82A-1801 to 82A-1806.
19. Department of social and rehabilitation services, 82A-1901 to 82A-1908.
20. Department of fish and game, 82A-2001 to 82A-2004.
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### CHAPTER 1—GENERAL PROVISIONS

#### Section

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| 82A-122. | Federal aid.   |
| 82A-123. | Other laws remain in force—exceptions.                         |

**82A-101. Short title.** This act shall be known and may be cited as the "Executive Reorganization Act of 1971."

**History:** En. 82A-101 by Sec. 1, Ch. 272, L. 1971.

#### Title of Act

An act to reorganize the executive department of Montana state government in

accordance with the constitutional amendment, chapter 1 of the extraordinary session, Laws of Montana, 1969, adopted at the general election of November 3, 1970, and effective under the governor's proclamation, November 20, 1970, which provides that: 'All executive and administrative offices, boards, bureaus, commissions, agencies and instrumentalities of the executive department of state government

and their respective functions, powers, and duties, except for the office of governor, lieutenant governor, secretary of the state, attorney general, state treasurer, state auditor, and superintendent of public instruction, shall be allocated by law among and within not more than twenty (20) departments by no later than July 1, 1973.'; and repealing sections 27-427, 59-901, and 59-902, R. C. M., 1947.

**82A-102. Declaration of policy and purpose.** (1) The purpose of this act is to comply with the constitutional amendment, chapter 1 of the extraordinary session, Laws of Montana, 1969, adopted at the general election of November 3, 1970, and effective under the governor's proclamation, November 20, 1970, which requires that "[a]ll executive and administrative offices, boards, commissions, agencies and instrumentalities of the executive department of state government and their respective functions, powers, and duties, except for the office of governor, lieutenant governor, secretary of the state, attorney general, state treasurer, state auditor, and superintendent of public instruction, shall be allocated by law among and within not more than twenty (20) departments by no later than July 1, 1973."

(2) It is the public policy of this state and the purpose of this act to create a structure of the executive department of state government which is responsive to the needs of the people of this state and sufficiently flexible to meet changing conditions; to strengthen the executive capacity to administer effectively and efficiently at all levels; to encourage greater public participation in state government; to effect the grouping of state agencies into a reasonable number of departments primarily according to function; to provide that the responsibility within the executive department of state government for the implementation of programs and policies is clearly fixed and ascertainable; and to eliminate overlapping and duplication of effort within the executive department of state government.

(3) It is the intent of the legislative assembly to provide, within this act, with the least disruption of governmental service and functions and the least expense, for the orderly transfer of functions of existing agencies to departments created by this act.

(4) It is further the intent of the legislative assembly not to increase, decrease, or change the statutory functions, powers, and duties of any agency existing before the effective date of this act, unless such intent is specifically expressed herein.

**History:** En. 82A-102 by Sec. 1, Ch. 272, L. 1971.

**82A-103. Definitions.** As used in this act: (1) "Executive department" means the executive department of state government referred to in the Montana constitution, articles IV and VII.

(2) "Reorganization amendment" means the amendment to the Montana constitution, chapter 1 of the extraordinary session, Laws of Montana, 1969, adopted at the general election of November 3, 1970, and effective under the governor's proclamation, November 20, 1970.

(3) "Agency" means an office, position, commission, committee, board, department, council, division, bureau, section, or any other entity or instrumentality of the executive department of state government.

(4) "Unit" means an internal subdivision of an agency, created by law or by administrative action, including a division, bureau, section, or department, and an agency allocated or transferred to a department for administrative purposes only by this act.

(5) Except when used in connection with the name of an agency existing before the effective date of the applicable chapter of this act, "department" means a principal functional and administrative entity, created by this act, within the executive department of state government; is one of the twenty (20) principal departments permitted under the reorganization amendment; and includes its units.

(6) "Department head" means a director, commission, board, commissioner, or constitutional officer in charge of a department created by this act.

(7) "Director" means a department head specifically referred to as a director in this act, and does not mean a commission, board, commissioner, or constitutional officer.

(8) "Advisory capacity" means furnishing advice, gathering information, making recommendations, and performing such other activities as may be necessary to comply with federal funding requirements, and does not mean administering a program or function or setting policy.

(9) "Function" means a duty, power, or program, exercised by or assigned to an agency, whether or not specifically provided for by law.

(10) "Quasi-judicial function" means an adjudicatory function exercised by an agency, involving the exercise of judgment and discretion in making determinations in controversies. The term includes, but is not limited to, the functions of interpreting, applying, and enforcing existing rules and laws; granting or denying privileges, rights, or benefits; issuing, suspending, or revoking licenses, permits, and certificates; determining rights and interests of adverse parties; evaluating and passing on facts; awarding compensation; fixing prices; ordering action or abatement of action; adopting procedural rules; holding hearings; and any other act necessary to the performance of a quasi-judicial function.

(11) "Quasi-legislative function" generally means making or having the power to make rules or set rates and all other acts connected with or essential to the proper exercise of a quasi-legislative function.

(12) "Investment function" means the function of placing public money where it will yield an income or revenue, and includes the functions of:

(a) Assisting agencies with public money to determine if, when, and how much surplus cash is available for investment.

(b) Determining the amount of surplus treasury cash to be invested.

(c) Determining the type of investment to be made.

(d) Preparing the claim to pay for the investment.

**History:** En. 82A-103 by Sec. 1, Ch. 272,  
L. 1971.

**Cross-References**

Reorganization amendment, Const., art.  
VII, sec. 21.



**82A-104. Structure of executive department of state government.**

(1) In accordance with the reorganization amendment, all executive and administrative offices, boards, commissions, agencies, and instrumentalities of the executive department of state government, and their respective functions, are allocated by this act among and within the following departments created by this act:

- (a) Department of administration.
- (b) Department of agriculture.
- (c) Department of business regulation.
- (d) Department of education.
- (e) Department of health and environmental sciences.
- (f) Department of highways.
- (g) Department of institutions.
- (h) Department of intergovernmental relations.
- (i) Department of labor and industry.
- (j) Department of state lands.
- (k) Department of law enforcement and public safety.
- (l) Department of livestock.
- (m) Department of military affairs.
- (n) Department of natural resources and conservation.
- (o) Department of professional and occupational licensing.
- (p) Department of public service regulation.
- (q) Department of revenue.
- (r) Department of social and rehabilitation services.
- (s) Department of fish and game.

(2) The governor, lieutenant governor, secretary of state, attorney general, state treasurer, state auditor, and superintendent of public instruction each head a constitutional office. Except as otherwise provided in this act, the statutory functions of each constitutional officer are continued.

(3) For its internal structure, each department shall adhere to the following standard terms:

(a) The principal unit of a department is a "division." Each division shall be headed by an "administrator."

(b) The principal unit of a division is a "bureau." Each bureau shall be headed by a "chief."

(c) The principal unit of a bureau is a "section." Each section shall be headed by a "supervisor."

**History:** En. 82A-104 by Sec. 1, Ch. 272,  
L. 1971.

**82A-105. Policy-making authority and administrative powers of governor.** In accordance with article VII, section 5 of the Montana constitution, the governor is the chief executive officer of the state. Subject to the constitution and law of this state, the governor shall formulate and administer the policies of the executive department of state government. In the execution of these policies, the governor has full powers of supervision, approval, direction, and appointment over all departments and their units, other than the office of the lieutenant governor, secretary of

state, attorney general, state treasurer, state auditor, and superintendent of public instruction, except as otherwise provided by law. Whenever a conflict arises as to the administration of the policies of the executive department of state government, except for conflicts arising in the office of the lieutenant governor, secretary of state, attorney general, state treasurer, state auditor, and superintendent of public instruction, the governor shall resolve the conflict, and the decision of the governor is final.

**History:** En. 82A-105 by Sec. 1, Ch. 272,  
L. 1971.

**82A-106. Appointment and qualifications of department heads.** (1) The governor shall appoint each department head who is a director in this act.

(2) An appointment of a director by the governor is subject to the confirmation of the senate, except that the governor may appoint a director to assume office before the senate meets in its next regular session to consider the appointment. A director so appointed is vested with all the functions of the office upon assuming the office, and is a de jure officer, notwithstanding the fact that the senate has not yet confirmed the appointment. If the senate does not confirm the appointment of a director, the governor shall make a new appointment.

(3) A director serves at the pleasure of the governor. The governor may remove a director at any time and appoint a new director to the office.

(4) The governor shall select a director on the basis of his professional and administrative knowledge and experience and such additional qualifications as are provided by law.

(5) If a vacancy occurs in the office of a director, the governor shall appoint a new director to serve at the pleasure of the governor.

(6) Heads of departments who are not directors shall be elected or appointed and serve, and their vacancies filled, as provided by law.

**History:** En. 82A-106 by Sec. 1, Ch. 272,  
L. 1971.

**82A-107. Duties and powers of department heads.** (1) Except as otherwise provided in this act, each department head shall:

(a) Supervise, direct, account for, organize, plan, administer, and execute the functions vested in the department by this act or other law.

(b) Establish the policy to be followed by the department and employees.

(c) Compile and submit reports and budgets for the department as required by law or requested by the governor.

(d) Provide the governor with any information that he requests at any time on the operation of the department.

(e) Represent the department in communications with the governor.

(f) Prescribe rules, consistent with law and rules established by the governor, for the administration of the department; the conduct of

the employees; the distribution and performance of business; and the custody, use, and preservation of the records, documents, and property pertaining to department business. The lieutenant governor, secretary of state, attorney general, state treasurer, state auditor, and superintendent of public instruction may prescribe their own rules for their departments or offices and the governor may not prescribe rules for them.

(g) Establish the internal organizational structure of the department and allocate the functions of the department to units to promote the economic and efficient administration and operation of the department. The internal structure of the department shall be established in accordance with section 82A-104(3) of this act.

(h) Subject to law, and the state merit system if applicable, establish and make appointments to necessary subordinate positions, and abolish unnecessary positions.

(i) Maintain a central office in Helena for the department, and such other facilities throughout the state as may be required for the effective and efficient operation of the department.

(2) Except as otherwise provided within this act, each department head may:

(a) Subject to law, and the state merit system if applicable, transfer employees between positions, remove persons appointed to positions, and change the duties, titles, and compensation of employees within the department.

(b) Delegate any of the functions vested in the department head to subordinate employees, except the power to remove employees of the department and fix their compensation.

(c) Require that any officer or employee of the department give an official bond, if the officer or employee of the department is not required to do so by law, in an amount to be determined by the director of the department of administration.

History: En. 82A-107 by Sec. 1, Ch. 272,  
L. 1971.

**82A-108. Allocation or transfer for administrative purposes only.**

(1) An agency allocated or transferred to a department for administrative purposes only in this act shall:

(a) Exercise its quasi-judicial, quasi-legislative, licensing, and policy-making functions independently of the department and without approval or control of the department.

(b) Submit its budgetary requests through the department.

(c) Submit reports required of it by law or by the governor through the department.

(2) The department to which an agency is allocated or transferred for administrative purposes only in this act shall:

(a) Direct and supervise the budgeting, record keeping, reporting, and related administrative and clerical functions of the agency.

(b) Include the agency's budgetary requests in the departmental budget.



(c) Collect all revenues for the agency and deposit them in the proper fund or account; except as provided in section 82A-1603(6) of this act, the department may not use or divert the revenues from the fund or account for purposes other than provided by law.

(d) Provide staff for the agency. Unless otherwise indicated in this act, the agency may not hire its own personnel.

(e) Print and disseminate for the agency any required notices, rules, or orders adopted, amended, or repealed by the agency.

(3) The department head of a department to which any agency is allocated or transferred for administrative purposes only in this act shall:

(a) Represent the agency in communications with the governor.

(b) Allocate office space to the agency as necessary, subject to the approval of the department of administration.

**History:** En. 82A-108 by Sec. 1, Ch. 272,  
L. 1971.

**82A-109. Prior right of department head to agencies and records.** Each department head designated by this act or appointed by the governor has, before assuming the office of the department head, full access to all agencies and their records within the department created by this act for the purpose of formulating plans for internal organization and the fiscal and personnel administration of the department.

**History:** En. 82A-109 by Sec. 1, Ch. 272,  
L. 1971.

**82A-110. Creation of advisory councils.** (1) A department head or the governor may create advisory councils. An official of the executive department of state government other than a department head or the governor, including the superintendents of the state's institutions and the presidents of the units of the state's university system, or an agency, may also create advisory councils, but only if federal law or regulation requires that such official or agency create the advisory council as a condition to the receipt of federal funds.

(2) Each advisory council created under this section shall be known as the "\_\_\_\_\_ advisory council."

(3) The creating authority shall prescribe the composition and advisory functions of each advisory council created; appoint its members, who shall serve at the pleasure of the governor; and specify a date when the existence of each advisory council ends.

(4) Advisory councils may be created only for the purpose of acting in an advisory capacity as defined in section 82A-103(8) of this act.

(5) Each member of an advisory council may, unless he is a full-time salaried officer or employee of this state, be paid in an amount to be determined by the department head, not to exceed twenty-five dollars (\$25) for each day in which he is actually and necessarily engaged in the performance of council duties, and shall also be reimbursed for actual and necessary expenses incurred while in the performance of council duties. Members who are full-time salaried officers or employees of this state

may not be compensated for their service as members, but shall be reimbursed for their expenses.

(6) Unless otherwise specified by the creating authority, at its first meeting in each year each advisory council shall elect a chairman and such other officers as it considers necessary.

(7) Unless otherwise specified by the creating authority, each advisory council shall meet at least annually and shall also meet on the call of the creating authority or the governor, and may meet at other times on the call of the chairman or a majority of its members. No advisory council may meet outside the city of Helena without the express prior authorization of the creating authority.

(8) A majority of the membership of an advisory council constitutes a quorum to do business.

(9) Except as provided in subsection (10) of this section, no advisory council may be created or appointed by a department head or any other official without the approval of the governor. In order for the creation or approval of the creation of an advisory council to be effective, the governor must file in his office and in the office of the secretary of state a record of the council created showing the council's:

(a) Name, in accordance with subsection (2) of this section.

(b) Composition.

(c) Names and addresses of the appointed members.

(d) Purpose.

(e) Term of existence, in accordance with subsection (11) of this section.

(10) The board of education, the attorney general, and the superintendent of public instruction may create advisory councils, which shall serve at their pleasure, without the approval of the governor. They must file a record of each council created by them in the office of the governor and the office of the secretary of state in accordance with subsection (9) of this section.

(11) No advisory council may be created to remain in existence longer than two (2) years after the date of its creation or beyond the period required to receive federal or private funds, whichever occurs later, unless extended by executive order of the governor, or by the board of education, the attorney general, or the superintendent of public instruction for those advisory councils created in the manner set forth in subsection (10) of this section. If the existence of an advisory council is extended, they shall specify a new date, not more than two (2) years later, when the existence of the advisory council ends, and file a record of the order in the office of the governor and the office of the secretary of state. The existence of any advisory council may be extended as many times as necessary.

(12) As used in this subsection, "advisory body" means an administratively created agency which acts in an advisory capacity. The department head of each department created by this act shall, upon the effective date of the applicable chapter of this act, file a record of each advisory body within the department not abolished by this act. The record shall be filed in accordance with subsection (9) of this section.

Upon the filing of such record, the provisions of this section shall apply to each such advisory body.

**History:** En. 82A-110 by Sec. 1, Ch. 272,  
L. 1971.

**82A-111. Administratively created agencies—prohibition.** The governor, a department head, or any other official of the executive department of state government, or an agency, may not, by administrative action, create or attempt to create an agency of state government. This section does not apply to:

(1) Advisory councils created in accordance with section 82A-110 of this act.

(2) Units within the internal structure of a department established under section 82A-107(g) of this act.

**History:** En. 82A-111 by Sec. 1, Ch. 272,  
L. 1971.

**82A-112. Quasi-judicial boards.** (1) If an agency is created in this act and is designated as a quasi-judicial board:

(a) The number of members and their qualifications are as specified in the section creating the board; in addition to those qualifications, at least one (1) member shall be an attorney licensed to practice law in the state.

(b) The governor shall appoint a majority of the members, who shall serve for terms concurrent with that of the governor's term, or the remainder thereof, and until their successors are appointed and qualified. The governor shall appoint the remaining members of the board for terms ending on January 1, 1975. Thereafter, members shall be appointed by the governor for four (4) year terms, and until their successors are appointed and qualified. It is the intent of this subsection that the governor appoint a majority of the members of each quasi-judicial board at the beginning of his term, with the remaining members to be appointed in the middle of his term. As used in this subsection, "majority" means the next greatest whole number more than half (as three (3) of five (5), four (4) of seven (7), nine (9) of sixteen (16), etc.).

(c) The governor shall designate the chairman.

(d) Members may be removed by the governor only for cause.

(e) Each member shall, unless he is a full-time salaried officer or employee of this state, be paid twenty-five dollars (\$25) for each day in which he is actually and necessarily engaged in the performance of board duties, and shall also be reimbursed for actual and necessary expenses incurred while in the performance of board duties. Members who are full-time salaried officers or employees of this state may not be compensated for their service as members, but shall be reimbursed for their expenses.

(f) A majority of the membership constitutes a quorum to do business.

(2) The following provisions apply to an agency continued in this act and designated as a quasi-judicial board:



(a) Subsections (c) through (f) of the preceding subsection.

(b) Persons who were members of the board before the effective date of the chapter of this act continuing the board shall serve for the remainder of their terms; thereafter, members shall be appointed by the governor and serve in accordance with subsection (b) of the preceding subsection.

(c) The number of members and their qualifications remain as prescribed before the effective date of the chapter of this act continuing the board, unless otherwise specified in that chapter.

(3) Any board continued or created in this act and assigned the duty of acting in a quasi-judicial capacity in certain matters has the authority, in addition to any quasi-judicial functions retained in or transferred to it by this act, to perform any of those quasi-judicial functions which are proper and necessary to perform its duties. A quasi-judicial function includes holding hearings and issuing orders, and any other appropriate quasi-judicial function enumerated in section 82A-103 (10) of this act. The board may also employ hearing examiners in the exercise of its quasi-judicial functions, but only if the board has specific authority in this act to hire personnel. If the board does not have the specific authority, hearing examiners shall be provided by the department to which the board is attached.

History: En. 82A-112 by Sec. 1, Ch. 272,  
L. 1971.

**82A-113. Agencies abolished with split transfers.** If an agency is abolished before all of its functions have been transferred to other departments which have not been implemented by executive order of the governor under this act, then the department created in the chapter of this act under which the agency is abolished succeeds to the remaining functions until they are transferred to the other departments subsequently implemented by the governor.

History: En. 82A-113 by Sec. 1, Ch. 272,  
L. 1971.

**82A-114. Agencies or functions not assigned.** If an agency or a function of an agency existing before the effective date of this chapter is not allocated or transferred to a department or a constitutional office by this act it shall be allocated or transferred to the appropriate department by the governor in an executive order.

History: En. 82A-114 by Sec. 1, Ch. 272,  
L. 1971.

**82A-115. Future functions.** If an agency or a function of an agency established after the effective date of this chapter is not allocated or transferred to a department or a constitutional office by this act or any other act of the legislative assembly, the governor shall, by executive order, allocate that agency or function to the appropriate principal department or unit created by this or any future act.

History: En. 82A-115 by Sec. 1, Ch. 272,  
L. 1971.

**82A-116. Rights of state personnel.** Unless otherwise provided in this act, each state officer or employee affected by the reorganization of the executive department of state government under this act is entitled to all rights which he possessed as a state officer or employee before the effective date of the applicable chapter of this act, including rights to tenure in office and of rank or grade, rights to vacation and sick pay and leave, rights under any retirement or personnel plan or labor union contract, rights to compensatory time earned, and any other rights under any law or administrative policy. This section is not intended to create any new rights for any state officer or employee, but to continue only those rights in effect before the effective date of the applicable chapter of this act.

History: En. 82A-116 by Sec. 1, Ch. 272,  
L. 1971.

**82A-117. Rights to property.** The department or unit thereof that succeeds to all or part of the functions of an agency under this act also succeeds to the rights to all real and personal property of that agency relating to the functions or parts of functions transferred. The property includes real property, records, office equipment, supplies, contracts, books, papers, documents, maps, appropriations, accounts within and without the state treasury, funds, vehicles, and all other similar property. However, the department or unit may not use or divert moneys in a fund or account for a purpose other than provided by law. The governor shall resolve any conflict as to the proper disposition of the property, and his decision is final. This section does not apply to property owned by the federal government.

History: En. 82A-117 by Sec. 1, Ch. 272,  
L. 1971.

**82A-118. Rules, regulations, and orders.** The department or unit thereof that succeeds to all or part of the functions of an agency under this act also succeeds to the rules, regulations, and orders of that agency relating to the functions or parts of functions transferred. The rules, regulations, and orders of any agency in effect before the effective date of the chapter affecting the agency remain in effect until amended, repealed, superseded, or nullified by proper authority or by law.

History: En. 82A-118 by Sec. 1, Ch. 272,  
L. 1971.

**82A-119. Legal proceedings.** This act does not affect the validity of any judicial or administrative proceeding pending or which could have been commenced before the effective date of the applicable chapter of this act, and the department or unit which succeeds to the functions of an agency relating to the proceeding shall be substituted as a party in interest.

History: En. 82A-119 by Sec. 1, Ch. 272,  
L. 1971.

**82A-120. Rights and duties under existing transactions.** The rights, privileges, and duties of the holders of bonds and other obligations is-

sued, and of the parties to contracts, leases, indentures, and other transactions entered into, before the effective date of the applicable chapter of this act, by the state or by any agency, officer, or employee thereof, and covenants and agreements as set forth therein, remain in effect, and none of those rights, privileges, duties, covenants, or agreements is impaired or diminished by reason of the transfer of the functions of an agency or the abolition of an agency in this act. The department or unit which succeeds to the functions of an agency is substituted for that agency and succeeds to its rights and duties under the provisions of those bonds, contracts, leases, indentures, and other transactions.

**History:** En. 82A-120 by Sec. 1, Ch. 272, L. 1971.

**82A-121. References.** Unless inconsistent with this act, whenever an agency existing before the effective date of the chapter affecting that agency is referred to by any law, contract, or other document, that reference applies to the department or unit which succeeds to the functions of that agency.

**History:** En. 82A-121 by Sec. 1, Ch. 272, L. 1971.

**82A-122. Federal aid.** If any part of this act is ruled to be in conflict with federal requirements which are a prescribed condition to the receipt of federal aid by the state, an agency, or a political subdivision, that part of this act has no effect, and the governor may issue an executive order which substitutes for that part to the extent necessary to effectuate the receipt of federal aid. The order is effective until the legislative assembly again acts upon the matter.

**History:** En. 82A-122 by Sec. 1, Ch. 272, L. 1971.

**82A-123. Other laws remain in force—exceptions.** It is not the intent of this act to repeal or amend any laws relating to functions performed by an agency, unless specifically provided in this act or unless there is an irreconcilable conflict between this act and those laws.

**History:** En. Sec. 4, Ch. 272, L. 1971.

#### **Repealing Clause**

Section 3 of Ch. 272, Laws 1971 read "Sections 59-901 and 59-902, R. C. M. 1947, are repealed."

#### **Separability Clause**

Section 5 of Ch. 272, Laws 1971 read "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

#### **Effective Date**

Section 6 of Ch. 272, Laws 1971 read "Chapters 1 and 21 of Section 1 of this

act and Sections 4 and 5 of this act are effective upon its passage and approval. Chapters 2 through 20 of section 1 of this act are effective upon the date the governor signs an executive order implementing the chapter or on December 31, 1972, whichever occurs first. The governor shall file the executive order with the secretary of state on the day the order is signed. The secretary of state shall file and record the order and send a copy of the order to each addressee on his official mailing list for the Revised Codes of Montana and to each addressee on the mailing list of the publisher of the Revised Codes of Montana. Section 2 of this act is effective when Chapter 4 of Section 1 of this act is effective, and Section 3 is effective when Chapter 2 of Section 1 of this act is effective."



## CHAPTER 2—DEPARTMENT OF ADMINISTRATION

## Section

- 82A-201. Department of administration—creation—head.
- 82A-202. Agencies abolished—functions transferred to department.
- 82A-203. Additional functions transferred to department.
- 82A-204. Board of investments—creation—allocation—composition—designation.
- 82A-205. Investment functions transferred to board of investments.
- 82A-206. Merit system council—creation—continued—transfer—composition.
- 82A-207. Board of examiners—continued—transfer—functions.
- 82A-208. Board of state prison commissioners—continued—transfer.
- 82A-209. State depository board—continued—transfer—functions.
- 82A-210. Board of administration—continued—transfer—functions.
- 82A-211. Functions transferred to board of administration.
- 82A-212. Teachers' retirement board—continued—transfer—functions.
- 82A-213. Additional agencies abolished.

**82A-201. Department of administration—creation—head.** There is created a department of administration. The department head is a director of administration appointed by the governor in accordance with section 82A-106 of this act.

**History:** En. 82A-201 by Sec. 1, Ch. 272, L. 1971.

**82A-202. Agencies abolished—functions transferred to department.** (1) The department of administration and its units, created in Title 82, chapter 33, R. C. M. 1947, including the state purchasing department created in Title 82, chapter 19, R. C. M. 1947, are abolished, and their functions, except the functions contained in Title 69, chapter 21, R. C. M. 1947 (pertaining to building construction standards), transferred to the department of law enforcement and public safety in chapter 12 of this act, are transferred to the department of administration created in this chapter. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the department of administration or its units or the state purchasing department, except the references contained in Title 69, chapter 21, R. C. M. 1947, means the department of administration created in this chapter.

(2) The office of state controller, created in Title 82, chapter 1, R. C. M. 1947, the position of the state purchasing agent, created in Title 82, chapter 19, R. C. M. 1947, and the position of budget director, created in Title 79, chapter 10, R. C. M. 1947, are abolished, and their functions, except the functions contained in Title 69, chapter 21, R. C. M. 1947 (pertaining to building construction standards), transferred to the department of law enforcement and public safety in chapter 12 of this act, are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state controller, state purchasing agent, or budget director, except the references contained in Title 69, chapter 21, R. C. M. 1947, means the department of administration created in this chapter.

(3) The state board of review, created in Title 79, chapter 24, R. C. M. 1947, is abolished, and its functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of review means the department of administration created in this chapter.

(4) The Montana highway patrolmen's retirement board, created in Title 31, chapter 2, R. C. M. 1947, is abolished, and its functions, except the quasi-judicial functions transferred to the board of administration in section 82A-211 of this chapter, are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana highway patrolmen's retirement board, except the references relating to the quasi-judicial functions transferred to the board of administration in section 82A-211 of this chapter, means the department of administration created in this chapter.

**History:** En. 82A-202 by Sec. 1, Ch. 272,  
L. 1971.

**82A-203. Additional functions transferred to department.** (1) The functions of the board of state prison commissioners, which is created in article VII, section 20 of the Montana constitution, are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the board of state prison commissioners means the department of administration created in this chapter.

(2) The functions of the board of examiners, which is created in article VII, section 20 of the Montana constitution, except the functions contained in article VII, section 20 of the Montana constitution and the functions relating to the planning, financing, administration, and construction of state buildings in the long-range building program contained in Title 78, chapters 7 and 12; Title 79, chapter 22; and sections 82-1131, 82-3317, and 82-3319, R. C. M. 1947, retained in the board in section 82A-207 of this chapter, are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the board of examiners, except the references contained in Title 78, chapters 7 and 12; Title 79, chapter 22; and sections 82-1131, 82-3317, and 82-3319, R. C. M. 1947, means the department of administration created in this chapter.

**History:** En. 82A-203 by Sec. 1, Ch. 272,  
L. 1971.

**82A-204. Board of investments—creation—allocation—composition—designation.** (1) There is created a board of investments.

(2) The board is allocated to the department for administrative purposes only as prescribed in section 82A-108 of this act. Personnel for the board shall be appointed by the department subject to the approval of the board.

(3) The board is composed of five (5) members, appointed by the governor as prescribed in section 82A-112 of this act, informed and experienced in the subject of investments.

(4) The board of investments has the sole authority to exercise the investment functions transferred to it under section 82A-205 of this chapter. No other agency may invest state funds. All laws governing the exercise of the investment functions remain in effect, and the board shall direct the investment of state funds in accordance with those laws and the constitution of this state. The board has the power to veto any investments made under its general supervision.

(5) The board is designated as a quasi-judicial board for the purposes of section 82A-112 of this act.

**History:** En. 82A-204 by Sec. 1, Ch. 272,  
L. 1971.

**82A-205. Investment functions transferred to board of investments.**

(1) The investment functions and the functions relating thereto of the state board of land commissioners, which are contained in the citations of the Revised Codes of Montana, 1947, enumerated below, are transferred to the board of investments created in this chapter:

(a) Title 11, chapter 23 (pertaining to municipal bonds and indebtedness).

(b) Title 16, chapter 20 (pertaining to county bonds).

(c) Title 31, chapter 2 (pertaining to the highway patrolmen's retirement system).

(d) Title 59, chapter 11 (pertaining to social security coverage).

(e) Title 68, chapter 7 (pertaining to the management of the retirement fund), and chapter 14 (pertaining to the game wardens' retirement system).

(f) Title 75, chapter 62 (pertaining to the teachers' retirement system).

(g) Title 79, chapter 3 (pertaining to the state depository board), chapter 11 (pertaining to land board funds), and chapter 12 (pertaining to the Montana trust and legacy fund).

(h) Title 81, chapter 10 (pertaining to investments), and chapter 24 (pertaining to development of resources).

(i) Title 92, chapter 11 (pertaining to workmen's compensation).

Unless inconsistent with this act, any reference in the citations enumerated above in this subsection to the state board of land commissioners relating to the investment functions transferred to the board of investments means the board of investments created in this chapter.

(2) The investment functions of the state depository board and of the state treasurer, which are contained in Title 79, chapter 3, R. C. M. 1947 (pertaining to state depository board—deposit and investment of state funds), are transferred to the board of investments. Unless inconsistent with this act, any reference in Title 79, chapter 3, R. C. M. 1947, to the state depository board or the state treasurer relating to the investment functions transferred to the board of investments means the board of investments created in this chapter.

(3) The investment functions of the industrial accident board, which are contained in Title 92, chapter 13, R. C. M. 1947 (pertaining to workmen's compensation), are transferred to the board of investments. Unless inconsistent with this act, any reference in Title 92, chapter 13, R. C. M. 1947, to the industrial accident board relating to the investment functions transferred to the board of investments means the board of investments created in this chapter.

(4) The investment functions of the board of administration, including its investment functions as the Montana state game wardens' retirement board and as the Montana judges' retirement board, which



are contained in Title 68, chapters 1 through 13 (pertaining to the public employees' retirement system), Title 68, chapter 14 (pertaining to the game wardens' retirement system), and Title 93, chapter 11 (pertaining to the judges' retirement system), are transferred to the board of investments. Unless inconsistent with this act, any reference in Title 68, chapters 1 through 14, and Title 93, chapter 11, R. C. M. 1947, to the board of administration relating to the investment functions transferred to the board of investments means the board of investments created in this chapter.

(5) The investment functions of the teachers' retirement board, which are contained in Title 75, chapter 62 (Laws of Montana, 1971, chapter 5, sections 96 through 113), R. C. M. 1947 (pertaining to the teachers' retirement system), are transferred to the board of investments. Unless inconsistent with this act, any reference in Title 75, chapter 62 (Laws of Montana, 1971, chapter 5, sections 96 through 113), R. C. M. 1947, to the teachers' retirement board relating to the investment functions transferred to the board of investments means the board of investments created in this chapter.

**History:** En. 82A-205 by Sec. 1, Ch. 272,  
L. 1971.

**82A-206. Merit system council—creation—continued—transfer—composition.** (1) The administratively created agency known as the merit system council is hereby created by law.

(2) The council and its functions are continued.

(3) The council is transferred to the department for administrative purposes only as prescribed in section 82A-108 of this act. However, the council may hire its own personnel, and section 82A-108(2)(d) does not apply.

(4) The council is composed of three (3) members, appointed by the governor for six (6) year overlapping terms. The governor shall appoint the members upon the recommendation of the agencies which participate in the joint merit system, and in accordance with federal requirements. The members of the council before the effective date of this chapter continue as members for the remainder of their terms; thereafter, members shall be appointed in accordance with this section.

(5) Members shall be compensated and reimbursed as are members of advisory councils in section 82A-110(5) of this act.

**History:** En. 82A-206 by Sec. 1, Ch. 272,  
L. 1971.

**82A-207. Board of examiners—continued—transfer—functions.** (1) The board of examiners, created in article VII, section 20 of the Montana constitution, is continued.

(2) The board is transferred to the department for administrative purposes only as prescribed in section 82A-108 of this act. However, the board may hire its own personnel, and section 82A-108(2)(d) does not apply.

(3) The board retains only the following functions:

(a) Its functions relating to examining claims against the state, except salaries or compensation of officers fixed by law, as prescribed in article VII, section 20 of the Montana constitution.

(b) Its functions relating to planning, financing, administration, and construction of state buildings in the long range building program, contained in Title 78, chapters 7 and 12; Title 79, chapter 22; and sections 82-1131, 82-3317, and 82-3319, R. C. M. 1947.

**History:** En. 82A-207 by Sec. 1, Ch. 272,  
L. 1971.

**82A-208. Board of state prison commissioners—continued—transfer.**

(1) The board of state prison commissioners, created in article VII, section 20 of the Montana constitution, is continued.

(2) The board is transferred to the department for administrative purposes only as prescribed in section 82A-108 of this act.

**History:** En. 82A-208 by Sec. 1, Ch. 272,  
L. 1971.

**82A-209. State depository board—continued—transfer—functions.** (1) The state depository board, created in article XII, section 14 of the Montana constitution, is continued.

(2) The board is transferred to the department for administrative purposes only as prescribed in section 82A-108 of this act.

(3) The functions of the board, except the investment functions contained in Title 79, chapter 3, R. C. M. 1947, transferred to the board of investments in section 82A-205 of this chapter, are continued in the board.

**History:** En. 82A-209 by Sec. 1, Ch. 272,  
L. 1971.

**82A-210. Board of administration—continued—transfer—functions.**

(1) The board of administration, provided for in Title 68, chapter 5, R. C. M. 1947, is continued.

(2) The board is transferred to the department for administrative purposes only as prescribed in section 82A-108 of this act.

(3) The functions of the board, including its functions as the Montana state game wardens' retirement board and as the Montana judges' retirement board, except the investment functions transferred to the board of investments in section 82A-205 of this chapter, are continued in the board.

**History:** En. 82A-210 by Sec. 1, Ch. 272,  
L. 1971.

**82A-211. Functions transferred to board of administration.** The quasi-judicial functions of the Montana highway patrolmen's retirement board, which are contained in Title 31, chapter 2, R. C. M. 1947 (pertaining to the highway patrolmen's retirement system), are transferred to the board of administration. Unless inconsistent with this act, any reference in Title 31, chapter 2, R. C. M. 1947, to the Montana highway patrolmen's

retirement board relating to the quasi-judicial functions transferred to the board of administration means the board of administration.

**History:** En. 82A-211 by Sec. 1, Ch. 272,  
L. 1971.

**82A-212. Teachers' retirement board—continued—transfer—functions.**

(1) The teachers' retirement board, provided for in Title 75, chapter 62 (sections 96 through 113, public schools recodification laws of 1971), R. C. M. 1947, is continued.

(2) The board is transferred to the department for administrative purposes only as prescribed in section 82A-108 of this act. However, the board may hire its own personnel, and section 82A-108(2)(d) does not apply.

(3) The functions of the board, except the investment functions transferred to the board of investments in section 82A-205 of this chapter, are continued in the board.

**History:** En. 82A-212 by Sec. 1, Ch. 272,  
L. 1971.

**82A-213. Additional agencies abolished.** The following agencies are abolished:

(1) The data processing advisory committee, provided for in section 82-3306, R. C. M. 1947.

(2) The advisory council on building construction, provided for in section 82-3318, R. C. M. 1947.

**History:** En. 82A-213 by Sec. 1, Ch. 272,  
L. 1971.

### CHAPTER 3—DEPARTMENT OF AGRICULTURE

Section

82A-301. Department of agriculture—creation—head.

82A-302. Agencies abolished—functions transferred to department.

82A-303. Additional functions transferred to department.

82A-304. Montana wheat research and marketing committee—continued—transfer.

82A-305. Additional agencies abolished.

**82A-301. Department of agriculture—creation—head.** There is created a department of agriculture. As prescribed in article XVIII, section 1 of the Montana constitution, the department head is the commissioner of agriculture. The commissioner holding office before the effective date of this chapter continues as the commissioner of the department for the remainder of his term. The commissioner shall be appointed and serve as provided in article XVIII, section 1 of the Montana constitution.

**History:** En. 82A-301 by Sec. 1, Ch. 272,  
L. 1971.

**82A-302. Agencies abolished—functions transferred to department.**

(1) The department of agriculture, created in Title 3, chapter 1, R. C. M. 1947, and its units, except the administratively created dairy and egg division and the division of weights and measures, created in Title 90, chapter 1, R. C. M. 1947, are abolished, and their functions, except those



enumerated below, are transferred to the department of agriculture created in this chapter:

(a) The functions contained in Title 3, chapters 22 through 24 (pertaining to poultry improvement, eggs and egg dealers, and dairy products), and in Title 27, chapter 5, R. C. M. 1947 (pertaining to oleo-margarine regulation), transferred to the department of livestock in chapter 13 of this act.

(b) The functions contained in Title 90, chapter 1, R. C. M. 1947 (pertaining to weights and measures), transferred to the department of business regulation in chapter 4 of this act.

Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the department or its units, except the references enumerated below, means the department of agriculture created in this chapter:

(a) The references contained in Title 3, chapters 22 through 24, and in Title 27, chapter 5, R. C. M. 1947.

(b) The functions contained in Title 90, chapter 1, R. C. M. 1947 Unless inconsistent with this act, any reference in Title 3, chapter 25, R. C. M. 1947 (pertaining to quality labels), to the department or its units means the department of agriculture created in this chapter or the department of livestock created in chapter 13 of this act, whichever is applicable.

(2) The position of agricultural marketing co-ordinator, created in Title 3, chapter 1, R. C. M. 1947, is abolished, and the functions of the co-ordinator are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the agricultural marketing co-ordinator means the department of agriculture created in this chapter.

(3) The office of farm storage commissioner, created in Title 3, chapter 4, R. C. M. 1947, is abolished, and its functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the farm storage commissioner means the department of agriculture created in this chapter.

**History:** En. 82A-302 by Sec. 1, Ch. 272,  
L. 1971.

**82A-303. Additional functions transferred to department.** (1) The functions of the state board of health and the state department of health, which are contained in the Montana Insecticide, Fungicide, and Rodenticide Act of 1947, Title 27, chapter 2, R. C. M. 1947, are transferred to the department. Unless inconsistent with this act, any reference in Title 27, chapter 2, R. C. M. 1947, to the board of health or department of health means the department of agriculture created in this chapter.

(2) The functions of the state apiarist, which are contained in section 82-806, subsections 1 through 4, and section 82-807(11), R. C. M. 1947 (pertaining to enforcing apiary laws), are transferred to the department. Unless inconsistent with this act, any reference in section 82-806, subsections 1 through 4, and section 82-807(11), R. C. M. 1947, to

the state apiarist means the department of agriculture created in this chapter.

(3) The functions of the commissioner of agriculture, which position is provided for in article XVIII, section 1 of the Montana constitution and in Title 3, chapter 1, R. C. M. 1947, except those enumerated below, are transferred to the department:

(a) The functions of the commissioner as ex officio state sealer of weights and measures, which position is created in Title 90, chapter 1, R. C. M. 1947 (pertaining to weights and measures), transferred to the department of business regulation in chapter 4 of this act.

(b) The functions which are contained in Title 60, chapter 2, R. C. M. 1947 (pertaining to petroleum products regulation), transferred to the department of business regulation in chapter 4 of this act.

(c) The functions which are contained in Title 3, chapter 22, R. C. M. 1947 (pertaining to poultry improvement), chapter 23 (pertaining to eggs and egg dealers), and chapter 24 (pertaining to dairy products), transferred to the department of livestock in chapter 13 of this act.

(d) The functions which are contained in Title 27, chapter 5, R. C. M. 1947 (pertaining to oleomargarine regulation), transferred to the department of livestock in chapter 13 of this act.

Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the commissioner of agriculture, except those enumerated below, means the department of agriculture created in this chapter:

(a) The references contained in Title 90, chapter 1, R. C. M. 1947.

(b) The references contained in Title 60, chapter 2, R. C. M. 1947.

(c) The references contained in Title 3, chapters 22, 23, and 24, R. C. M. 1947.

(d) The references contained in Title 27, chapter 5, R. C. M. 1947.

Unless inconsistent with this act, any reference in Title 3, chapter 25, R. C. M. 1947 (pertaining to quality labels), to the commissioner of agriculture means the department of agriculture created in this chapter or the department of livestock created in chapter 13 of this act, whichever is applicable.

**History:** En. 82A-303 by Sec. 1, Ch. 272,  
L. 1971.

**82A-304. Montana wheat research and marketing committee—continued—transfer.** (1) The Montana wheat research and marketing committee, created in Title 3, chapter 29, R. C. M. 1947, and its functions are continued.

(2) The committee is transferred to the department for administrative purposes only as prescribed in section 82A-108 of this act.

(3) Members of the committee before the effective date of this chapter serve for the remainder of their terms. The composition, method of appointment, terms of office, compensation, reimbursement, and qualifications of committee members remain as prescribed by law.

**History:** En. 82A-304 by Sec. 1, Ch. 272,  
L. 1971.

**82A-305. Additional agencies abolished.** The following agencies are abolished:

- (1) The agricultural marketing advisory body, created in section 3-121, R. C. M. 1947.
- (2) The poultry advisory board, provided for in section 3-2201, R. C. M. 1947.
- (3) The state mosquito control advisory committee, created in section 16-4209, R. C. M. 1947.
- (4) The agriculture and livestock council, created in section 82-2901, R. C. M. 1947.
- (5) The Montana wool laboratory advisory committee, created in section 75-717, R. C. M. 1947.

**History:** En. 82A-305 by Sec. 1, Ch. 272, L. 1971.

#### CHAPTER 4—DEPARTMENT OF BUSINESS REGULATION

##### Section

- 82A-401. Department of business regulation—creation—head.  
 82A-402. Agencies abolished—functions transferred to department.  
 82A-403. Additional functions transferred to department.  
 82A-404. Board of food distributors—continued—renamed board of trade—transfer—designation.  
 82A-405. Montana trade commission abolished—functions transferred to board of trade.  
 82A-406. Milk control board—continued—renamed board of milk control—transfer—functions—designation.

**82A-401. Department of business regulation—creation—head.** There is created a department of business regulation. The department head is the state examiner provided for in article VII, section 8 of the Montana constitution. He shall serve at the pleasure of the governor.

**History:** En. 82A-401 by Sec. 1, Ch. 272, L. 1971.

##### **82A-402. Agencies abolished—functions transferred to department.**

(1) The state banking department of the state of Montana and the position of superintendent of banks, provided for in Title 5, chapter 6, R. C. M. 1947, are abolished, and their functions are transferred to the department of business regulation. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the superintendent of banks or the state banking department means the department of business regulation.

(2) The office of consumer loan commissioner, created in Title 47, chapter 2, R. C. M. 1947, is abolished, and its functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the consumer loan commissioner means the department of business regulation.

(3) The position of state sealer of weights and measures and the division of weights and measures, created in Title 90, chapter 1, R. C. M. 1947, are abolished, and their functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of



Montana, 1947, to the state sealer or to the division of weights and measures means the department of business regulation.

**History:** En. 82A-402 by Sec. 1, Ch. 272,  
L. 1971.

**82A-403. Additional functions transferred to department.** (1) The functions of the state examiner, except the functions with respect to the political subdivisions of the state and their officers and employees transferred to the department of intergovernmental relations and enumerated in chapter 9 of this act, are transferred to the department. In accordance with article VII, section 8 of the Montana constitution, the state examiner retains the function of examining the accounts of the state treasurer, supreme court clerks, district court clerks, and county treasurers. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state examiner, except the references contained in the citations enumerated above in this subsection, means the department of business regulation.

(2) The functions of the Montana milk control board, which is created in Title 27, chapter 4, R. C. M. 1947, except the quasi-judicial functions contained in section 27-407, R. C. M. 1947 (pertaining to fixing minimum prices for milk), retained in the board under section 82A-406 of this chapter, are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana milk control board, except the references in section 27-407, R. C. M. 1947, relating to the quasi-judicial functions retained in the board under section 82A-406 of this chapter, means the department of business regulation.

(3) The functions of the commissioner of agriculture, which are contained in Title 60, chapter 2, R. C. M. 1947 (pertaining to petroleum products regulation), are transferred to the department. Unless inconsistent with this act, any reference in Title 60, chapter 2, R. C. M. 1947, to the commissioner of agriculture means the department of business regulation.

(4) The functions of the department of agriculture, which are contained in Title 90, chapter 1, R. C. M. 1947 (pertaining to weights and measures), are transferred to the department of business regulation. Unless inconsistent with this act, any reference in Title 90, chapter 1, R. C. M. 1947, to the department of agriculture means the department of business regulation.

**History:** En. 82A-403 by Sec. 1, Ch. 272,  
L. 1971.

**82A-404. Board of food distributors—continued—renamed board of trade—transfer—designation.** (1) The Montana state board of food distributors, provided for in title 27, chapter 3, R. C. M. 1947, and its functions are continued, and the board is renamed the board of trade. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana state board of food distributors means the board of trade.

(2) The board is transferred to the department for administrative purposes only as prescribed in section 82A-108 of this act.

(3) The board is designated as a quasi-judicial board for purposes of section 82A-112 of this act.

**History:** En. 82A-404 by Sec. 1, Ch. 272,  
L. 1971.

**82A-405. Montana trade commission abolished—functions transferred to board of trade.** The Montana trade commission, created in Title 70, chapter 2, R. C. M. 1947, is abolished, and its functions are transferred to the board of trade. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana trade commission means the board of trade.

**History:** En. 82A-405 by Sec. 1, Ch. 272,  
L. 1971.

**82A-406. Milk control board—continued—renamed board of milk control—transfer—functions—designation.** (1) The Montana milk control board, created in Title 27, chapter 4, R. C. M. 1947, is continued, and the board is renamed the board of milk control.

(2) The board is transferred to the department for administrative purposes only as prescribed in section 82A-108 of this act.

(3) The board retains only the quasi-judicial functions contained in section 27-407, R. C. M. 1947 (pertaining to setting milk prices). Unless inconsistent with this act, any reference in section 27-407, R. C. M. 1947, to the Montana milk control board means the board of milk control.

(4) The board is designated as a quasi-judicial board for purposes of section 82A-112 of this act.

**History:** En. 82A-406 by Sec. 1, Ch. 272,  
L. 1971.

## CHAPTER 5—DEPARTMENT OF EDUCATION

### Section

- 82A-501. Department—creation—head.
- 82A-502. Agencies abolished—functions transferred to co-operative extension service.
- 82A-503. Montana historical society transferred to department.
- 82A-504. Director of Montana historical society—continued.
- 82A-505. Functions of Montana historical society and of board of trustees transferred to director.
- 82A-506. Board functions.
- 82A-507. Board of trustees of state historical society—continued—composition—function.
- 82A-508. Montana arts council—continued—transfer.
- 82A-509. State library commission—continued—transfer.
- 82A-510. Additional agencies abolished.

**82A-501. Department—creation—head.** There is created a department of education. The department head is the state board of education, created in article XI, section 11 of the Montana constitution and provided for in Title 75, R. C. M. 1947.

**History:** En. 82A-501 by Sec. 1, Ch. 272,  
L. 1971.

**82A-502. Agencies abolished—functions transferred to co-operative extension service.** (1) The position of state entomologist of Montana, provided for in Title 82, chapter 8, R. C. M. 1947, is abolished, and the functions of the position are transferred to the co-operative extension service within the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state entomologist means the co-operative extension service within the department of education.

(2) The position of state apiarist, provided for in Title 82, chapter 8, R. C. M. 1947, is abolished, and the functions of the office, except the functions contained in section 82-806, subsections 1 through 4, and section 82-807(11), R. C. M. 1947 (pertaining to enforcing the apiary laws), transferred to the department of agriculture in chapter 3 of this act, are transferred to the co-operative extension service within the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state apiarist, except the references in section 82-806, subsections 1 through 4, and section 82-807(11), R. C. M. 1947, means the co-operative extension service within the department of education.

**History:** En. 82A-502 by Sec. 1, Ch. 272,  
L. 1971.

**82A-503. Montana historical society transferred to department.** The Montana historical society provided for in Title 44, chapter 5, R. C. M. 1947, is transferred to the department.

**History:** En. 82A-503 by Sec. 1, Ch. 272,  
L. 1971.

**82A-504. Director of Montana historical society—continued.** The position of director of the Montana historical society, which position is provided for in Title 44, chapter 5, R. C. M. 1947, and his functions are continued. After the effective date of this chapter, the director shall be appointed and may be removed by the board of trustees of the Montana historical society, subject to the approval of the board of education.

**History:** En. 82A-504 by Sec. 1, Ch. 272,  
L. 1971.

**82A-505. Functions of Montana historical society and of board of trustees transferred to director.** The functions of the Montana historical society and of the board of trustees of the Montana historical society, which society and board are provided for in Title 44, chapter 5, R. C. M. 1947, are transferred to the director of the Montana historical society. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana historical society or the board of trustees of the Montana historical society relating to the functions transferred to the director means the director of the Montana historical society within the department of education.

**History:** En. 82A-505 by Sec. 1, Ch. 272,  
L. 1971.



**82A-506. Board functions.** (1) The functions of the state board of education, including its functions as ex officio board of regents and as the state board for vocational education, are continued in the board as the department head, except:

(a) The functions of the Montana state bureau of mines and geology, which are contained in Title 50, chapter 10, R. C. M. 1947 (pertaining to strip coal-mining regulation), and which are transferred to the department of natural resources and conservation in chapter 15 of this act.

(b) The functions of the division of vocational rehabilitation, created in Title 41, chapter 8, R. C. M. 1947, transferred to the department of social and rehabilitation services in chapter 19 of this act.

(2) The composition, method of selection, terms of office, compensation, reimbursement, and qualifications of the members of the state board of education, the board of regents, and the state board for vocational education remain as prescribed by law.

**History:** En. 82A-506 by Sec. 1, Ch. 272, L. 1971.

**82A-507. Board of trustees of state historical society—continued—composition—function.** (1) The board of trustees of the state historical society, created in Title 44, chapter 5, R. C. M. 1947, is continued.

(2) The board consists of fifteen (15) members, appointed by the governor to serve at his pleasure. Members of the board before the effective date of this chapter serve for the remainder of their terms; thereafter, members shall be appointed and serve in accordance with this subsection. The qualifications for board members in section 44-520, R. C. M. 1947, apply. The board may organize itself in accordance with section 44-523(1), R. C. M. 1947. Members shall be compensated and reimbursed as are members of advisory councils in section 82A-110(5) of this act.

(3) The board shall only act in an advisory capacity to the state board of education and the director of the state historical society on matters relating to the functions of the director.

**History:** En. 82A-507 by Sec. 1, Ch. 272, L. 1971.

**82A-508. Montana arts council—continued—transfer.** (1) The Montana arts council, created in Title 82, chapter 36, R. C. M. 1947, and its functions are continued.

(2) The council is transferred to the department for administrative purposes only as prescribed in section 82A-108 of this act.

(3) Members of the council before the effective date of this chapter serve for the remainder of their terms. The composition, method of appointment, terms of office, compensation, reimbursement, and qualifications of board members remain as prescribed by law.

(4) The director of the council shall be appointed and may be removed by the council, subject to the approval of the board of education.

**History:** En. 82A-508 by Sec. 1, Ch. 272, L. 1971.

**82A-509. State library commission—continued—transfer.** (1) The state library commission, created in Title 44, chapter 1, R. C. M. 1947, and its functions are continued.

(2) The commission is transferred to the department for administrative purposes only as prescribed in section 82A-108 of this act.

(3) Members of the commission before the effective date of this chapter serve for the remainder of their terms. The composition, method of appointment, terms of office, compensation, reimbursement, and qualifications of commission members remain as prescribed by law.

(4) The state librarian shall be appointed and may be removed by the commission, subject to the approval of the board of education.

**History:** En. 82A-509 by Sec. 1, Ch. 272,  
L. 1971.

**82A-510. Additional agencies abolished.** The following agencies are abolished:

(1) The advisory council on teacher education and certification, administratively created.

(2) The council on education for the disadvantaged, administratively created.

**History:** En. 82A-510 by Sec. 1, Ch. 272,  
L. 1971.

#### CHAPTER 6—DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

##### Section

82A-601. Department of health and environmental sciences—creation—head.

82A-602. Agencies abolished—functions transferred to department.

82A-603. Additional functions transferred to department.

82A-604. Division of environmental sciences—creation.

82A-605. State board of health—continued—renamed—designation.

82A-606. Air pollution control advisory council—continued—membership—functions.

82A-607. State water pollution control council—continued—renamed water pollution control advisory council.

82A-608. Director of health and environmental sciences—creation—qualifications.

82A-609. Additional agencies abolished.

**82A-601. Department of health and environmental sciences—creation—head.** There is created a department of health and environmental sciences. The department head is the director of health and environmental sciences provided for in section 82A-608 of this chapter.

**History:** En. 82A-601 by Sec. 1, Ch. 272,  
L. 1971.

**82A-602. Agencies abolished—functions transferred to department.**

(1) The state department of health, created in Title 69, chapter 41, R. C. M. 1947, and its units are abolished, and their functions, except those enumerated below, are transferred to the department of health and environmental sciences:

(a) The functions contained in the Montana Insecticide, Fungicide, and Rodenticide Act of 1947, Title 27, chapter 2, R. C. M. 1947, transferred to the department of agriculture in chapter 3 of this act.

(b) The function in section 69-4203(5), R. C. M. 1947 (pertaining to enforcing the industrial hygiene laws), transferred to the department of labor and industry in chapter 10 of this act. The department of health and environmental sciences shall notify the department of labor and industry of any alleged violation of the industrial hygiene laws or rules established thereunder. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the department of health or its units, except those enumerated below, means the department of health and environmental sciences:

(a) The references contained in Title 27, chapter 2, R. C. M. 1947.

(b) The references contained in Title 69, chapter 42, R. C. M. 1947, relating to the enforcement functions transferred to the department of labor and industry in chapter 10 of this act.

(2) The sanitarians registration council, created in Title 69, chapter 34, R. C. M. 1947, is abolished, and its functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the sanitarians registration council means the department of health and environmental sciences.

(3) The Montana commission on alcohol and drug dependence, created in Title 69, chapter 62, R. C. M. 1947, is abolished, and its functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana commission on alcohol and drug dependence means the department of health and environmental sciences.

**History:** En. 82A-602 by Sec. 1, Ch. 272,  
L. 1971.

**82A-603. Additional functions transferred to department.** (1) The functions of the state water pollution control council, which is created in Title 69, chapter 48, R. C. M. 1947, are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state water pollution control council means the department of health and environmental sciences.

(2) The functions of the state board of health, which is provided for in Title 69, chapter 41, R. C. M. 1947, except the functions enumerated below, are transferred to the department:

(a) The functions contained in the Montana Insecticide, Fungicide, and Rodenticide Act of 1947, Title 27, chapter 2, R. C. M. 1947, transferred to the department of agriculture in chapter 3 of this act.

(b) The functions contained in Title 50, chapter 11, R. C. M. 1947 (pertaining to dredge mining regulation), transferred to the department of natural resources and conservation in chapter 15 of this act.

(c) The functions contained in Title 41, chapter 22, R. C. M. 1947 (pertaining to nurses' employment practices), transferred to the department of labor and industry in chapter 10 of this act.

Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of health, except those enumerated below, means the department of health and environmental sciences:

(a) The references contained in Title 27, chapter 2, R. C. M. 1947.



(b) The references contained in Title 50, chapter 11, R. C. M. 1947.

(c) The references contained in Title 41, chapter 22, R. C. M. 1947.

**History:** En. 82A-603 by Sec. 1, Ch. 272,  
L. 1971.

**82A-604. Division of environmental sciences—creation.** There is created a division of environmental sciences within the department. The board of health and environmental sciences shall assign all functions performed by the department relating to air pollution control, water pollution control, radiation control, pesticides control, environmental sanitation, solid waste disposal, industrial hygiene, and related areas to the division.

**History:** En. 82A-604 by Sec. 1, Ch. 272,  
L. 1971.

**82A-605. State board of health—continued—renamed—designation.**

(1) The state board of health provided for in Title 69, chapter 41, R. C. M. 1947, is continued and renamed the board of health and environmental sciences.

(2) The board is designated as a quasi-judicial board for purposes of section 82A-112 of this act.

**History:** En. 82A-605 by Sec. 1, Ch. 272,  
L. 1971.

**82A-606. Air pollution control advisory council—continued—membership—functions.** (1) The air pollution control advisory council, created in Title 69, chapter 39, R. C. M. 1947, is continued.

(2) Council membership remains as prescribed in section 69-3908, R. C. M. 1947, except that the executive officer of the state board of health is replaced by the director of the department of health and environmental sciences.

(3) After the effective date of this chapter, appointed council members serve at the pleasure of the governor.

(4) The council shall act in an advisory capacity to the department of health and environmental sciences on matters relating to air pollution.

(5) Subsections (5) through (8) of section 82A-110 of this act apply to the council and members.

**History:** En. 82A-606 by Sec. 1, Ch. 272,  
L. 1971.

**82A-607. State water pollution control council—continued—renamed water pollution control advisory council.** (1) The state water pollution control council, created in Title 69, chapter 48, R. C. M. 1947, is continued and renamed the water pollution control advisory council. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state water pollution control council means the water pollution control advisory council.

(2) Council membership remains as prescribed in section 69-4810, R. C. M. 1947, except that the executive officer of the state department of health, the state fish and game department director, and the director of

the water resources board are replaced by the director of the department of health and environmental sciences, the director of the fish and game department, and the administrator of the water resources division of the department of natural resources and conservation, respectively.

(3) After the effective date of this chapter, appointed council members serve at the pleasure of the governor.

(4) The council shall only act in an advisory capacity to the department of health and environmental sciences on matters relating to water pollution.

(5) Subsections (5) through (8) of section 82A-110 of this act shall apply to the council and members.

**History:** En. 82A-607 by Sec. 1, Ch. 272, L. 1971.

**82A-608. Director of health and environmental sciences—creation—qualifications.** (1) There is created the position of director of health and environmental sciences. The director shall be appointed by the governor in the manner set forth in section 82A-106 of this act for directors who are department heads, and in addition shall:

(a) Have a degree of doctor of medicine.

(b) Have successfully completed at least one (1) year of graduate study in an approved school of public health.

(c) Have had at least two (2) years' experience as a full-time public health officer.

(d) Be eligible for a license by the board of medical examiners.

(e) Receive a license from the board of medical examiners not later than six (6) months after his appointment.

(2) Section 82A-107 of this act applies to the director as a department head, subject to the concurrence of the board of health and environmental sciences. The director is the chief administrative officer of the department, and he shall in addition perform those functions that are delegated to him by the board of health and environmental sciences.

**History:** En. 82A-608 by Sec. 1, Ch. 272, L. 1971.

**82A-609. Additional agencies abolished.** The following agencies are abolished:

(1) The venereal disease and immunization advisory committee, administratively created.

(2) The laboratory advisory committee, administratively created.

(3) The migrant health advisory committee, administratively created.

(4) The hearing conservation advisory committee, administratively created.

(5) The family planning advisory committee, administratively created.

(6) The joint staff committee, administratively created.

(7) The interdepartmental council on mental retardation, administratively created.

(8) The radiation advisory committee, provided for in section 69-5805, R. C. M. 1947.

(9) The hospital and long-term care facilities advisory council, provided for in section 69-5214, R. C. M. 1947.

**History:** En. 82A-609 by Sec. 1, Ch. 272,  
L. 1971.

## CHAPTER 7—DEPARTMENT OF HIGHWAYS

### Section

- 82A-701. Department of highways—creation—head.
- 82A-702. Agencies abolished—functions transferred to department.
- 82A-703. Functions of highway commission transferred to department.
- 82A-704. Board of highway appeals—creation—allocation—composition—designation.
- 82A-705. Functions transferred to board of highway appeals.
- 82A-706. Highway commission—continued—designation.
- 82A-707. Director of highways—creation.
- 82A-708. Additional agencies abolished.

**82A-701. Department of highways—creation—head.** There is created a department of highways. The department head is the director of highways provided for in section 82A-707 of this chapter.

**History:** En. 82A-701 by Sec. 1, Ch. 272,  
L. 1971.

### **82A-702. Agencies abolished—functions transferred to department.**

(1) The highway department, provided for in Title 32, chapter 25, R. C. M. 1947, is abolished, and its functions are transferred to the department of highways created in this chapter. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the highway department means the department of highways created in this chapter.

(2) The position of state highway administrator, created in Title 32, chapter 25, R. C. M. 1947, is abolished, and the functions of the position are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state highway administrator means the department of highways created in this chapter.

(3) The Montana toll bridge authority, created in Title 32, chapter 27, R. C. M. 1947, is abolished, and its functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana toll bridge authority means the department of highways created in this chapter.

(4) The Montana motor vehicle reciprocity board, created in Title 53, chapter 7, R. C. M. 1947, is abolished, and its functions, except the quasi-judicial functions transferred to the board of highway appeals in section 82A-705 of this chapter, are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana motor vehicle reciprocity board, except the references relating to the quasi-judicial functions transferred to the board of highway appeals in section 82A-705 of this chapter, means the department of highways created in this chapter.

**History:** En. 82A-702 by Sec. 1, Ch. 272,  
L. 1971.

**82A-703. Functions of highway commission transferred to department.** The functions of the highway commission, which is provided for in Title 32,



chapter 24, R. C. M. 1947, except its functions acting as the Montana highway patrol board, contained in Title 31, chapter 1, R. C. M. 1947, transferred to the department of law enforcement and public safety or the attorney general in chapter 12 of this act, are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the highway commission, except the references in Title 31, chapter 1, R. C. M. 1947, to the commission acting as the Montana highway patrol board, means the department of highways created in this chapter.

**History:** En. 82A-703 by Sec. 1, Ch. 272,  
L. 1971.

**82A-704. Board of highway appeals—creation—allocation—composition—designation.** (1) There is created a board of highway appeals.

(2) The board is allocated to the department for administrative purposes only as prescribed in section 82A-108 of this act.

(3) The board is composed of three (3) members appointed by the governor as prescribed in section 82A-112 of this act.

(4) The board shall act in a quasi-judicial capacity for the hearing of grievances of personnel of the department, and for the hearing of disputes that may result from the administration and enforcement of proportional registration agreements under Title 53, chapter 7, R. C. M. 1947.

(5) The board is designated as a quasi-judicial board for purposes of section 82A-112 of this act.

**History:** En. 82A-704 by Sec. 1, Ch. 272,  
L. 1971.

**82A-705. Functions transferred to board of highway appeals.** The quasi-judicial functions of the Montana motor vehicle reciprocity board, which are contained in Title 53, chapter 7, R. C. M. 1947 (pertaining to reciprocity and proportional registration of motor vehicles), are transferred to the board of highway appeals. Unless inconsistent with this act, any reference in Title 53, chapter 7, R. C. M. 1947, to the Montana motor vehicle reciprocity board relating to the quasi-judicial functions transferred to the board of highway appeals means the board of highway appeals.

**History:** En. 82A-705 by Sec. 1, Ch. 272,  
L. 1971.

**82A-706. Highway commission — continued — designation.** (1) The highway commission, provided for in Title 32, chapter 24, R. C. M. 1947, is continued.

(2) The commission is designated as a quasi-judicial board for purposes of section 82A-112 of this act.

**History:** En. 82A-706 by Sec. 1, Ch. 272,  
L. 1971.

**82A-707. Director of highways—creation.** There is created the position of director of highways. The director shall be appointed by the

governor in the manner set forth in section 82A-106 of this act for directors who are department heads. Section 82A-107 of this act applies to the director as a department head, subject to the concurrence of the highway commission. The director is the chief administrative officer of the department, and in addition he shall perform those functions that are delegated to him by the commission.

**History:** En. 82A-707 by Sec. 1, Ch. 272, L. 1971.

**82A-708. Additional agencies abolished.** The following agencies are abolished:

(1) The Montana fact-finding committee on highways, streets, and bridges, created in Laws of Montana, 1955, chapter 99, at 196.

(2) The Montana council for highway research, created in Laws of Montana, 1955, chapter 99, at 196.

(3) The highway joint-development council, administratively created.

**History:** En. 82A-708 by Sec. 1, Ch. 272, L. 1971.

#### CHAPTER 8—DEPARTMENT OF INSTITUTIONS

##### Section

82A-801. Department of institutions—creation—head.

82A-802. Department of institutions abolished—functions transferred to department.

82A-803. Functions of board of institutions transferred to department.

82A-804. Board of pardons—continued—transfer—designation—administrator.

82A-805. Board of eugenics—continued—transfer—designation.

82A-806. Board of institutions—continued—transfer—functions—designation.

82A-807. Agencies abolished.

**82A-801. Department of institutions—creation—head.** There is created a department of institutions. The department head is a director of institutions appointed by the governor in accordance with section 82A-106 of this act.

**History:** En. 82A-801 by Sec. 1, Ch. 272, L. 1971.

**82A-802. Department of institutions abolished—functions transferred to department.** The state department of institutions, created in Title 80, chapter 14, R. C. M. 1947, and its units are abolished, and their functions, except those enumerated below, are transferred to the department of institutions created in this chapter:

(1) The functions with respect to the position of registrar of motor vehicles, trailers and semitrailers, which is created in Title 53, chapter 1, R. C. M. 1947, transferred to the department of law enforcement and public safety in chapter 12 of this act.

(2) The functions with respect to the state bureau of criminal identification and investigation, which is provided for in Title 80, chapter 30, R. C. M. 1947, transferred to the department of law enforcement and public safety in chapter 12 of this act.

Unless inconsistent with this act, any reference in the Revised Codes of

Montana, 1947, to the state department of institutions or its units means the department of institutions created in this chapter.

**History:** En. 82A-802 by Sec. 1, Ch. 272,  
L. 1971.

**82A-803. Functions of board of institutions transferred to department.** The functions of the state board of institutions, which is provided for in Title 80, chapter 14, R. C. M. 1947, except those enumerated below, are transferred to the department of institutions created in this chapter:

(1) The quasi-judicial functions continued in the board under section 82A-806 of this chapter.

(2) The functions of the board with respect to the position of registrar of motor vehicles, trailers and semitrailers, which is created in Title 53, chapter 1, R. C. M. 1947, transferred to the department of law enforcement and public safety in chapter 12 of this act.

(3) The functions of the board with respect to the state bureau of criminal identification and investigation, which is created in Title 80, chapter 20, R. C. M. 1947, transferred to the department of law enforcement and public safety in chapter 12 of this act.

Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of institutions, means the department of institutions created in this chapter.

**History:** En. 82A-803 by Sec. 1, Ch. 272,  
L. 1971.

**82A-804. Board of pardons—continued—transfer—designation—administrator.** (1) The state board of pardons, created in Title 94, chapter 98, R. C. M. 1947, and its functions are continued.

(2) The board is transferred to the department for administrative purposes only as prescribed in section 82A-108 of this act. However, the board may hire its own personnel, and section 82A-108(2)(d) does not apply.

(3) The board is designated as a quasi-judicial board for purposes of section 82A-112 of this act.

(4) The position of state director of probation and parole, provided for in Title 94, chapter 98, R. C. M. 1947, is renamed the administrator of probation and parole.

**History:** En. 82A-804 by Sec. 1, Ch. 272,  
L. 1971.

**82A-805. Board of eugenics—continued—transfer—designation.** (1) The state board of eugenics, created in Title 69, chapter 64, R. C. M. 1947, and its functions are continued.

(2) The board is transferred to the department for administrative purposes only as prescribed in section 82A-108 of this act.

(3) The board is designated as a quasi-judicial board for purposes of section 82A-112 of this act.

**History:** En. 82A-805 by Sec. 1, Ch. 272,  
L. 1971.



**82A-806. Board of institutions—continued—transfer—functions—designation.** (1) The state board of institutions, created in Title 80, chapter 14, R. C. M. 1947, is continued.

(2) The board is transferred to the department for administrative purposes only as prescribed in section 82A-108 of this act.

(3) The board shall act in an advisory capacity to the department.

(4) The board shall continue to act in a quasi-judicial capacity for the hearing of disputes concerning the state's custodial institutions within the department, including the hearing of grievances of inmates and personnel of the institutions. No quasi-judicial function exercised by the board may infringe upon statutory functions of the board of pardons.

(5) The board is designated as a quasi-judicial board for purposes of section 82A-112 of this act.

**History:** En. 82A-806 by Sec. 1, Ch. 272,  
L. 1971.

**82A-807. Agencies abolished.** The following agencies are abolished:

(1) The Boulder River school construction committee, provided for in Laws of Montana, 1963, H. B. 428.

(2) The council of superintendents, provided for in section 80-1406, R. C. M. 1947.

(3) The institutional chaplaincy advisory committee, administratively created.

(4) The advisory council to the state prison and the advisory council to the veterans' home, provided for in section 80-1406, R. C. M. 1947.

**History:** En. 82A-807 by Sec. 1, Ch. 272,  
L. 1971.

## CHAPTER 9—DEPARTMENT OF INTERGOVERNMENTAL RELATIONS

### Section

82A-901. Department of intergovernmental relations—creation—head.

82A-902. Agencies abolished—functions transferred to department.

82A-903. Additional functions transferred to department.

82A-904. County printing commission—continued—transfer—renamed board of county printing—composition.

82A-905. State aeronautics commission—continued—renamed board of aeronautics—transfer—functions—designation.

82A-906. Governor's highway traffic safety task force abolished.

**82A-901. Department of intergovernmental relations—creation—head.**

There is created a department of intergovernmental relations. The department head is a director of intergovernmental relations appointed by the governor in accordance with section 82A-106 of this act.

**History:** En. 82A-901 by Sec. 1, Ch. 272,  
L. 1971.

**82A-902. Agencies abolished—functions transferred to department.**

(1) The Montana highway traffic safety board, created in Title 32, chapter 46, R. C. M. 1947, and its units are abolished, and their functions are transferred to the department. Unless inconsistent with this act,

any reference in the Revised Codes of Montana, 1947, to the Montana highway traffic safety board means the department of intergovernmental relations.

(2) The department of planning and economic development and the planning and development commission, created in Title 82, chapter 37, R. C. M. 1947, are abolished, and their functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the department of planning and economic development or the planning and development commission means the department of intergovernmental relations.

(3) The state office of economic opportunity, administratively created, is abolished, and its functions are transferred to the department.

**History:** En. 82A-902 by Sec. 1, Ch. 272,  
L. 1971.

**82A-903. Additional functions transferred to department.** (1) The functions of the state aeronautics commission, which is created in Title 1, chapter 2, R. C. M. 1947, except the quasi-judicial and quasi-legislative functions retained in the commission under section 82A-905 of this chapter, are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state aeronautics commission, except references relating to the quasi-judicial and quasi-legislative functions retained in the commission under section 82A-905 of this chapter, means the department of intergovernmental relations.

(2) The office of state co-ordinator of Indian affairs, created in Title 82, chapter 27, R. C. M. 1947, and the functions of the office, are transferred to the department.

(3) The functions of the state examiner with respect to the political subdivisions of the state and their officers and employees, contained in the citations of the Revised Codes of Montana, 1947, enumerated below, are transferred to the department:

(a) Title 82, chapter 10 (pertaining to the general duties of the state examiner).

(b) Sections 5-907 and 5-910 (pertaining to examination of political subdivisions).

(c) Section 6-205 (pertaining to bonding of county officers and employees).

(d) Section 6-603 (pertaining to bonding of city or town officers or employees).

(e) Section 11-806 (pertaining to financial statements of cities or towns).

(f) Sections 11-1403, 11-1404, 11-1406, and 11-1411 (pertaining to the budget systems of cities or towns).

(g) Sections 11-1914 and 11-1923 (pertaining to investments by and examination of fire department relief associations).

(h) Section 11-3129 (pertaining to examination of cities operating under the commission form of government).

(i) Section 11-3253 (pertaining to auditing of cities operating under the commission-manager form of government).

(j) Sections 16-1901, 16-1902, 16-1903, 16-1904, and 16-1909 (pertaining to budget systems of counties).

(k) Sections 16-2001 and 16-2049 (pertaining to county finance).

(l) Sections 16-2618, 16-2621, and 16-2625 (pertaining to deposit of public funds).

(m) Sections 16-2924 and 16-2925 (pertaining to examining financial conditions of counties).

(n) Section 16-3916 (pertaining to auditing of counties operating under the county-manager form of government).

(o) Section 32-21-174 (pertaining to inspecting accounts of the interstate vehicle equipment safety commission).

(p) Sections 59-514 and 59-515 (pertaining to approval of destruction of city or town records).

(q) Section 75-1632 (pertaining to recommending bookkeeping by school trustees).

(r) Section 75-3737 (pertaining to establishing an on-farm training account).

(s) Sections 89-1215 and 89-2107 (pertaining to examination of irrigation districts).

(t) Section 89-3422 (pertaining to examination of conservancy districts).

However, in accordance with article VII, section 8 of the Montana constitution, the state examiner retains the function of examining the accounts of the state treasurer, supreme court clerks, district court clerks, and county treasurers. Unless inconsistent with this act, any reference in the citations enumerated above in this subsection to the state examiner relating to the functions transferred to the department means the department of intergovernmental relations.

**History:** En. 82A-903 by Sec. 1, Ch. 272, L. 1971.

**Compiler's Notes**

Sections 75-1632 and 75-3737, referred to

in subdivisions (3) (q) and (3) (r) of this section, were repealed by sec. 496, Ch. 5, Laws 1971. Functions of the state examiner with respect to school districts are now set forth in sec. 75-6807.

**82A-904. County printing commission—continued—transfer—renamed board of county printing—composition.** (1) The county printing commission, provided for in Title 16, chapter 12, R. C. M. 1947, and its functions are continued, and the commission is renamed the board of county printing. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the county printing commission means the board of county printing.

(2) The board is transferred to the department for administrative purposes only as prescribed in section 82A-108 of this act.

(3) Members of the board before the effective date of this chapter serve for the remainder of their terms. The composition, method of appointment, terms of office, and qualifications of board members remain as prescribed in section 16-1227, R. C. M. 1947. Members shall be compensated and reimbursed as are members of advisory councils in section 82A-110 of this act.

**History:** En. 82A-904 by Sec. 1, Ch. 272, L. 1971.



**82A-905. State aeronautics commission—continued—renamed board of aeronautics—transfer—functions—designation.** (1) The state aeronautics commission, created in Title 1, chapter 2, R. C. M. 1947, is continued, and the commission is renamed the board of aeronautics.

(2) The board is transferred to the department for administrative purposes only as prescribed in section 82A-108 of this act.

(3) The board shall act in an advisory capacity to the department on those matters relating to the functions of the aeronautics commission transferred to the department in section 82A-903 of this chapter.

(4) The board retains the quasi-judicial and quasi-legislative functions contained in sections 1-322 through 1-324, R. C. M. 1947 (pertaining to granting and suspending certificates of public convenience and necessity for air carriers, setting rates, and related matters). Unless inconsistent with this act, any reference in Title 1, chapter 2, R. C. M. 1947, to the state aeronautics commission relating to the quasi-judicial and quasi-legislative functions retained in the board means the board of aeronautics.

(5) The board is designated as a quasi-judicial board for purposes of section 82A-112 of this act.

**History:** En. 82A-905 by Sec. 1, Ch. 272, L. 1971.

**82A-906. Governor's highway traffic safety task force abolished.** The governor's highway traffic safety task force, administratively created, is abolished.

**History:** En. 82A-906 by Sec. 1, Ch. 272, L. 1971.

## CHAPTER 10—DEPARTMENT OF LABOR AND INDUSTRY

### Section

82A-1001. Department of labor and industry—creation—head.

82A-1002. Agencies abolished—functions transferred to department.

82A-1003. Additional functions transferred to the department.

82A-1004. Division of workmen's compensation—creation—head.

82A-1005. Agencies abolished—functions transferred to division of workmen's compensation.

82A-1006. Division of employment security—creation—head—bureaus.

82A-1007. Employment security commission abolished—functions transferred to division of employment security.

82A-1008. Board of labor appeals—creation—allocation—composition—function—designation.

82A-1009. Functions transferred to board of labor appeals.

82A-1010. Additional agencies abolished.

**82A-1001. Department of labor and industry—creation—head.** There is created a department of labor and industry. As prescribed in article XVIII, section 1 of the Montana constitution, the department head is the commissioner of labor and industry. The commissioner holding office before the effective date of this chapter continues as the commissioner of the department of labor and industry created by this chapter for the remainder of his term. The commissioner shall be appointed and serve as provided in article XVIII, section 1 of the Montana constitution.

**History:** En. 82A-1001 by Sec. 1, Ch. 272, L. 1971.

**82A-1002. Agencies abolished—functions transferred to department.**

(1) The department of labor and industry, created in Title 41, chapter 16, R. C. M. 1947, and its units are abolished, and their functions are transferred to the department of labor and industry created in this chapter. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the department of labor and industry or its units means the department of labor and industry created in this chapter.

(2) The apprenticeship council, provided for in Title 41, chapter 12, R. C. M. 1947, is abolished, and its functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the apprenticeship council means the department of labor and industry created in this chapter.

(3) The commission on the status of women, administratively created, is abolished, and its functions are transferred to the department.

**History:** En. 82A-1002 by Sec. 1, Ch. 272, L. 1971.

**82A-1003. Additional functions transferred to the department. (1)**

The functions of the state board of health, which are contained in Title 41, chapter 22, R. C. M. 1947 (pertaining to nurses' employment practices), are transferred to the department. Unless inconsistent with this act, any reference in Title 41, chapter 22, R. C. M. 1947, to the state board of health means the department of labor and industry created in this chapter.

(2) The functions of the state department of health relating to enforcing the industrial hygiene laws under section 69-4203(5), R. C. M. 1947, are transferred to the department of labor and industry created in this chapter. The department of labor and industry, on its own motion, or whenever it receives a notice of an alleged violation of the industrial hygiene laws or rules established thereunder from the department of health and environmental sciences, shall file a complaint of the alleged violation in the appropriate court and diligently pursue the action to its completion. Unless inconsistent with this act, any reference in Title 69, chapter 42, R. C. M. 1947, to the state department of health relating to its enforcement functions means the department of labor and industry created in this chapter.

**History:** En. 82A-1003 by Sec. 1, Ch. 272, L. 1971.

**82A-1004. Division of workmen's compensation—creation—head. (1)**

There is created a division of workmen's compensation within the department. The division head is an administrator appointed by the governor as are directors in accordance with section 82A-106 of this act.

(2) The division is allocated to the department for administrative purposes only as prescribed in section 82A-108 of this act. However, the division may hire its own personnel, and section 82A-108(2)(d) does not apply.

**History:** En. 82A-1004 by Sec. 1, Ch. 272, L. 1971.

**82A-1005. Agencies abolished—functions transferred to division of workmen's compensation.** (1) The industrial accident board, created in Title 92, chapter 1, R. C. M. 1947, and its units, including the department of safety, created in Title 41, chapter 17, R. C. M. 1947, are abolished, and their functions, except the board's investment functions contained in Title 92, chapter 13, R. C. M. 1947, transferred to the board of investments in chapter 2 of this act, are transferred to the division. The administrator of the division shall make the final determinations for workmen's compensation claims. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the industrial accident board or its units, except the references relating to the board's investment functions in Title 92, chapter 13, R. C. M. 1947, transferred to the board of investments in chapter 2 of this act, means the division of workmen's compensation of the department of labor and industry created in this chapter.

(2) The advisory committee on boiler rules, created in Title 69, chapter 15, R. C. M. 1947, is abolished, and its functions are transferred to the division. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the advisory committee on boiler rules means the division of workmen's compensation of the department of labor and industry created in this chapter.

(3) The board of examiners of applicants for coal mine foreman and mine examiner, and the board of examiners of applicants for state coal mine inspector, provided for in Title 50, chapter 4, R. C. M. 1947, are abolished, and their functions are transferred to the division. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the board of examiners of applicants for coal mine foreman and mine examiner and the board of examiners of applicants for state coal mine inspector, means the division of workmen's compensation of the department of labor and industry created in this chapter.

(4) The power line construction code committee, administratively created, is abolished, and its functions are transferred to the division.

**History:** En. 82A-1005 by Sec. 1, Ch. 272, L. 1971.

**82A-1006. Division of employment security — creation — head — bureaus.** (1) There is created a division of employment security within the department. The division head is an administrator appointed by the commissioner of labor and industry.

(2) Within the division of employment security are the following bureaus:

(a) The bureau of Montana state employment service.

(b) The bureau of unemployment insurance.

Each bureau shall be headed by a full-time chief appointed by the administrator. The administrator shall establish such other bureaus within the division as are required for the receipt of federal funds. Personnel of the division shall be employed in accordance with merit system standards.

**History:** En. 82A-1006 by Sec. 1, Ch. 272, L. 1971.



**82A-1007. Employment security commission abolished—functions transferred to division of employment security.** The employment security commission of Montana, created in Title 87, chapter 1, R. C. M. 1947, and its units are abolished, and their functions, except the quasi-judicial functions transferred to the board of labor appeals in section 82A-1009 of this chapter, are transferred to the division of employment security.

**History:** En. 82A-1007 by Sec. 1, Ch. 272, L. 1971.

**82A-1008. Board of labor appeals—creation—allocation—composition—function—designation.** (1) There is created a board of labor appeals.

(2) The board is allocated to the department for administrative purposes only as prescribed in section 82A-108 of this act.

(3) The board is composed of three (3) members of the public, who are not employees of the state government, appointed by the governor as prescribed in section 82A-112 of this act.

(4) The board shall act in a quasi-judicial capacity for the hearing of disputes concerning the administration of Montana's unemployment insurance laws.

(5) The board is designated as a quasi-judicial board for purposes of section 82A-112 of this act.

**History:** En. 82A-1008 by Sec. 1, Ch. 272, L. 1971.

**82A-1009. Functions transferred to board of labor appeals.** The quasi-judicial functions of the employment security commission of Montana, contained in Title 87, chapter 1, R. C. M. 1947 (pertaining to the unemployment compensation laws), are transferred to the board. Unless inconsistent with this act, any reference in Title 87, chapter 1, R. C. M. 1947, to the employment security commission of Montana relating to the quasi-judicial functions transferred to the board of labor appeals means the board of labor appeals.

**History:** En. 82A-1009 by Sec. 1, Ch. 272, L. 1971.

**82A-1010. Additional agencies abolished.** The following agencies are abolished:

(1) The labor-safety study commission, provided for in Title 41, chapter 21, R. C. M. 1947.

(2) The state board of arbitration and conciliation, created in Title 41, chapter 9, R. C. M. 1947.

**History:** En. 82A-1010 by Sec. 1, Ch. 272, L. 1971.

## CHAPTER 11—DEPARTMENT OF STATE LANDS

### Section

82A-1101. Department of state lands—creation—head.

82A-1102. Agencies abolished—functions transferred to department.

82A-1103. Functions of board of land commissioners continued.

82A-1104. Commissioner of state lands—creation.

**82A-1101. Department of state lands—creation—head.** There is created a department of state lands. The department head is the state board of land commissioners, created in article XI, section 4 of the Montana constitution.

**History:** En. 82A-1101 by Sec. 1, Ch. 272, L. 1971.

**82A-1102. Agencies abolished—functions transferred to department.** (1) The department of state lands and investments, provided for in Title 81, chapter 1, R. C. M. 1947, is abolished, and its functions are transferred to the department of state lands created in this chapter. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the department of state lands and investments means the department of state lands created in this chapter.

(2) The office of commissioner of state lands and investments, created in Title 81, chapter 2, R. C. M. 1947, is abolished, and its functions are transferred to the department of state lands. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the commissioner of state lands and investments means the department of state lands created in this chapter.

**History:** En. 82A-1102 by Sec. 1, Ch. 272, L. 1971.

**82A-1103. Functions of board of land commissioners continued.** The functions of the state board of land commissioners, which is created in article XI, section 4 of the Montana constitution, except the investment functions transferred to the board of investments and enumerated in chapter 2 of this act, are continued in the board.

**History:** En. 82A-1103 by Sec. 1, Ch. 272, L. 1971.

**82A-1104. Commissioner of state lands—creation.** (1) There is created the position of commissioner of state lands.

(2) The commissioner is the chief administrative officer of the department under the direction of the state board of land commissioners, and he shall perform those functions that are delegated to him by the board.

(3) The commissioner shall be appointed and serve as provided for directors in section 82A-106 of this act.

**History:** En. 82A-1104 by Sec. 1, Ch. 272, L. 1971.

## CHAPTER 12—DEPARTMENT OF LAW ENFORCEMENT AND PUBLIC SAFETY

### Section

82A-1201. Department of law enforcement and public safety—creation—head.

82A-1202. Agencies abolished—functions transferred to department.

82A-1203. Additional functions transferred to department.

82A-1204. Division of motor vehicles—creation.

82A-1205. Agencies abolished—functions transferred to division.

82A-1206. Functions of highway patrol and highway patrol chief transferred to division.

82A-1207. Board of crime control—creation—continued—transfer—composition.

82A-1208. Fire prevention advisory commission abolished.

**82A-1201. Department of law enforcement and public safety—creation—head.** There is created a department of law enforcement and public safety. The department head is the attorney general.

**History:** En. 82A-1201 by Sec. 1, Ch. 272, L. 1971.

**82A-1202. Agencies abolished—functions transferred to department.**

(1) The state bureau of criminal identification and investigation, provided for in Title 80, chapter 20, R. C. M. 1947, is abolished, and its statutory functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state bureau of criminal identification and investigation means the department of law enforcement and public safety.

(2) The position of criminal investigator created within the office of the attorney general in Title 82, chapter 4, R. C. M. 1947, is abolished, and the functions of the position are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the position of criminal investigator means the department of law enforcement and public safety.

(3) The state law enforcement teletypewriter communications committee, provided for in Title 82, chapter 39, R. C. M. 1947, is abolished, and its functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the law enforcement teletypewriter communications committee means the department of law enforcement and public safety.

(4) The Montana law enforcement academy advisory board, provided for in Title 75, chapter 52, R. C. M. 1947, is abolished, and its functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana law enforcement academy advisory board means the department of law enforcement and public safety.

(5) The office of state fire marshal, created in Title 82, chapter 12, R. C. M. 1947, is abolished, and its functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the office of state fire marshal means the department of law enforcement and public safety.

(6) The state building code council, created in Title 69, chapter 21, R. C. M. 1947, is abolished, and its functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state building code council means the department of law enforcement and public safety.

**History:** En. 82A-1202 by Sec. 1, Ch. 272, L. 1971.

**82A-1203. Additional functions transferred to department.** (1) The functions of the state electrical board of making inspections of electrical installations and issuing tags and charging fees therefor in section 66-2805(c)(i), R. C. M. 1947, and of establishing an electrical code in section 66-2802(i), R. C. M. 1947, are transferred to the department. Unless



inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state electrical board relating to its functions of making inspections of electrical installations and issuing tags and charging fees therefor or of establishing an electrical code means the department of law enforcement and public safety.

(2) The functions of the state controller and the department of administration, which are contained in Title 69, chapter 21, R. C. M. 1947 (pertaining to the state building code), are transferred to the department. Unless inconsistent with this act, any reference in Title 69, chapter 21, R. C. M. 1947, to the state controller or the department of administration means the department of law enforcement and public safety.

(3) The function of the secretary of state of registering machine guns in section 94-3108, R. C. M. 1947, is transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the secretary of state relating to his function of registering machine guns means the department of law enforcement and public safety.

**History:** En. 82A-1203 by Sec. 1, Ch. 272, L. 1971.

**82A-1204. Division of motor vehicles—creation.** There is created a division of motor vehicles within the department.

**History:** En. 82A-1204 by Sec. 1, Ch. 272, L. 1971.

**82A-1205. Agencies abolished—functions transferred to division.** (1) The position of registrar of motor vehicles, trailers and semitrailers, created in Title 53, chapter 1, R. C. M. 1947, is abolished, and the functions of the position, except the function of providing license plates for motor vehicles provided for in Title 53, chapter 1, R. C. M. 1947, are transferred to the division of motor vehicles. The function of providing license plates remains a function of the warden of the state prison. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the registrar of motor vehicles, trailers and semitrailers, except the references relating to the function of providing license plates, means the division of motor vehicles of the department of law enforcement and public safety.

(2) The Montana highway patrol board, provided for in Title 31, chapter 1, R. C. M. 1947, is abolished, and its functions, except the function of appointing the highway patrol chief in section 31-104, R. C. M. 1947, which is hereby transferred to the attorney general, are transferred to the division of motor vehicles. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana highway patrol board means the division of motor vehicles of the department of law enforcement and public safety, except references in section 31-104, R. C. M. 1947, relating to the function of appointing the highway patrol chief, where it means the attorney general.

**History:** En. 82A-1205 by Sec. 1, Ch. 272, L. 1971.

**82A-1206. Functions of highway patrol and highway patrol chief transferred to division.** The functions of the highway patrol, which is created in Title 31, chapter 1, R. C. M. 1947, and of the position of highway patrol chief, which is provided for in Title 31, chapter 1, R. C. M. 1947, are transferred to the division of motor vehicles.

**History:** En. 82A-1206 by Sec. 1, Ch. 272, L. 1971.

**82A-1207. Board of crime control—creation—continued—transfer—composition.** (1) The administratively created agency known as the governor's crime control commission is hereby created by law as the board of crime control, and its functions are continued.

(2) The board is transferred to the department for administrative purposes only as prescribed in section 82A-108 of this act. However, the board may hire its own personnel, and section 82A-108(2)(d) does not apply.

(3) The board is composed of sixteen (16) members appointed by the governor. The board shall be representative of state and local law-enforcement agencies and units of general local government.

(4) As designated by the governor as the state planning agency under the Omnibus Crime Control and Safe Streets Act of 1968, the board shall perform the functions assigned to it under that act.

(5) The members of the governor's crime control commission before the effective date of this chapter continue as members of the board of crime control for the remainder of the governor's term; thereafter members shall be appointed in accordance with section 82A-112(1)(b) of this act.

(6) The board is designated as a quasi-judicial board for purposes of section 82A-112 of this act, but section 82A-112(2)(b) does not apply.

**History:** En. 82A-1207 by Sec. 1, Ch. 272, L. 1971.

**82A-1208. Fire prevention advisory commission abolished.** The fire prevention advisory commission, provided for in section 82-1201, R. C. M. 1947, is abolished.

**History:** En. 82A-1208 by Sec. 1, Ch. 272, L. 1971.

#### CHAPTER 13—DEPARTMENT OF LIVESTOCK

##### Section

82A-1301. Department of livestock—creation—head.

82A-1302. Functions transferred to department.

82A-1303. Livestock commission—continued—renamed board of livestock—composition.

82A-1304. Livestock sanitary board abolished—Functions transferred to board of livestock.

82A-1305. Advisory committee on predatory animal control abolished.

**82A-1301. Department of livestock—creation—head.** There is created a department of livestock. The department head is the board of livestock provided for in section 82A-1303 of this chapter.

**History:** En. 82A-1301 by Sec. 1, Ch. 272, L. 1971.

**82A-1302. Functions transferred to department.** The functions of the department of agriculture and of the commissioner of agriculture, which are contained in the citations of the Revised Codes of Montana, 1947, enumerated below, are transferred to the department:

(1) Title 3, chapter 22 (pertaining to poultry improvement), chapter 23 (pertaining to eggs and egg dealers), chapter 24 (pertaining to dairy products), and chapter 25 (pertaining to quality labels).

(2) Title 27, chapter 5 (pertaining to oleomargarine regulation). Unless inconsistent with this act, any reference in Title 3, chapters 22 through 24, and in Title 27, chapter 5, R. C. M. 1947, to the department of agriculture or the commissioner of agriculture means the department of livestock. Unless inconsistent with this act, any reference in Title 3, chapter 25, R. C. M. 1947, to the department of agriculture or the commissioner of agriculture means the department of livestock or the department of agriculture created in chapter 3 of this act, whichever is applicable.

**History:** En. 82A-1302 by Sec. 1, Ch. 272, L. 1971.

**82A-1303. Livestock commission—continued—renamed board of livestock—composition.** (1) The livestock commission, provided for in Title 46, chapter 1, R. C. M. 1947, and its functions are continued, and the commission is renamed the board of livestock. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the livestock commission means the board of livestock.

(2) Members of the board before the effective date of this chapter continue as members for the remainder of their terms. The composition, method of selection, and terms of office of members of the board remain as prescribed in section 46-101, R. C. M. 1947, except:

(a) An appointee is vested with all the powers and duties of his office before being confirmed by the senate, as are directors in section 82A-106(2) of this act.

(b) The governor shall designate the chairman of the board.

(3) Members of the board shall be reimbursed and compensated as are members of quasi-judicial boards in section 82A-112(1)(e) of this act.

**History:** En. 82A-1303 by Sec. 1, Ch. 272, L. 1971.

**82A-1304. Livestock sanitary board abolished—functions transferred to board of livestock.** The livestock sanitary board, provided for in Title 46, chapter 2, R. C. M. 1947, is abolished, and its functions are transferred to the board of livestock. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the livestock sanitary board means the board of livestock.

**History:** En. 82A-1304 by Sec. 1, Ch. 272, L. 1971.



**82A-1305. Advisory committee on predatory animal control abolished.**

The advisory committee on predatory animal control, provided for in section 46-1903, R. C. M. 1947, is abolished.

**History:** En. 82A-1305 by Sec. 1, Ch. 272, L. 1971.

## CHAPTER 14—DEPARTMENT OF MILITARY AFFAIRS

## Section

82A-1401. Department of military affairs—creation—head.

82A-1402. Agencies abolished—functions transferred to department.

82A-1403. Functions of adjutant general transferred to department.

82A-1404. Additional agencies abolished.

**82A-1401. Department of military affairs—creation—head.** There is created a department of military affairs. The department head is the adjutant general of the state, who shall be appointed and serve in the same manner as are directors in section 82A-106 of this act. In addition, the qualifications of the adjutant general remain as prescribed in section 77-117, R. C. M. 1947.

**History:** En. 82A-1401 by Sec. 1, Ch. 272, L. 1971.

**82A-1402. Agencies abolished—functions transferred to department.**

(1) The adjutant general's department, provided for in Title 77, chapter 1, R. C. M. 1947, is abolished, and its functions are transferred to the department of military affairs. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the adjutant general's department means the department of military affairs.

(2) The state civil defense agency, created in Title 77, chapter 13, R. C. M. 1947, is abolished, and its functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state civil defense agency means the department of military affairs.

(3) The position of director of civil defense, created in Title 77, chapter 13, R. C. M. 1947, is abolished, and the functions of the position are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the position of director of civil defense means the department of military affairs.

(4) The office of emergency resource management, created in Title 77, chapter 15, R. C. M. 1947, is abolished, and its functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the office of emergency resource management means the department of military affairs.

(5) The office of state emergency planning director, provided for in Title 77, chapter 15, R. C. M. 1947, is abolished, and its functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the office of state-emergency planning director means the department of military affairs.

**History:** En. 82A-1402 by Sec. 1, Ch. 272, L. 1971.

**82A-1403. Functions of adjutant general transferred to department.** The functions of the position of adjutant general, which is created in Title 77, chapter 1, R. C. M. 1947, are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the position of adjutant general means the department of military affairs.

**History:** En. 82A-1403 by Sec. 1, Ch. 272, L. 1971.

**82A-1404. Additional agencies abolished.** The following agencies are abolished:

- (1) The civil defense advisory council, created in section 77-1305, R. C. M. 1947.
- (2) The state emergency resource planning committee, provided for in section 77-1504, R. C. M. 1947.
- (3) The training and education co-ordination committee, administratively created.

**History:** En. 82A-1404 by Sec. 1, Ch. 272, L. 1971.

#### CHAPTER 15—DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

##### Section

- 82A-1501. Department of natural resources and conservation—creation—head.
- 82A-1502. Agencies abolished—functions transferred to department.
- 82A-1503. Additional functions transferred to department.
- 82A-1504. Divisions of water resources, forestry and conservation districts—creation.
- 82A-1505. Agencies abolished—functions transferred to divisions.
- 82A-1506. Additional functions transferred to division.
- 82A-1507. State soil conservation committee—continued—membership—functions.
- 82A-1508. Oil and gas conservation commission—continued—renamed board of oil and gas—transfer—designation.
- 82A-1509. Board of natural resources and conservation—creation—composition—designation.
- 82A-1510. Director of natural resources and conservation—creation.
- 82A-1511. Additional agencies abolished.

**82A-1501. Department of natural resources and conservation—creation—head.** There is created a department of natural resources and conservation. The department head is the director of natural resources and conservation provided for in section 82A-1508 of this chapter.

**History:** En. 82A-1501 by Sec. 1, Ch. 272, L. 1971.

**82A-1502. Agencies abolished—functions transferred to department.** The Montana grass conservation commission, created in Title 46, chapter 23, R. C. M. 1947, is abolished, and its functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana grass conservation commission means the department of natural resources and conservation.

**History:** En. 82A-1502 by Sec. 1, Ch. 272, L. 1971.

**82A-1503. Additional functions transferred to department.** (1) The functions of the state board of health, which are contained in Title 50, chapter 11, R. C. M. 1947 (pertaining to dredge mining regulation), are transferred to the department. Unless inconsistent with this act, any reference in Title 50, chapter 11, R. C. M. 1947, to the state board of health means the department of natural resources and conservation.

(2) The functions of the Montana bureau of mines and geology, which are contained in Title 50, chapter 10, R. C. M. 1947 (pertaining to strip coal-mining regulation), are transferred to the department. Unless inconsistent with this act, any reference in Title 50, chapter 10, R. C. M. 1947, to the Montana bureau of mines and geology means the department of natural resources and conservation.

**History:** En. 82A-1503 by Sec. 1, Ch. 272, L. 1971.

**82A-1504. Divisions of water resources, forestry and conservation districts—creation.** (1) The following divisions of the department are created:

- (a) Division of water resources.
- (b) Division of forestry.
- (c) Division of conservation districts.

(2) Each division shall be headed by an administrator. The administrator of the division of forestry shall be technically trained and experienced in forestry and a graduate of an accredited forestry school.

**History:** En. 82A-1504 by Sec. 1, Ch. 272, L. 1971.

**82A-1505. Agencies abolished—functions transferred to divisions.**

(1) The Montana water resources board and its units, created in Title 89, chapter 1, R. C. M. 1947, are abolished, and their functions are transferred to the division of water resources. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana water resources board or its units means the division of water resources of the department of natural resources and conservation.

(2) The Montana state board of forestry and its units, created in Title 28, chapter 1, R. C. M. 1947, are abolished, and their functions are transferred to the division of forestry. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana state board of forestry means the division of forestry of the department of natural resources and conservation.

(3) The position of state forester, provided for in Title 81, chapter 14, R. C. M. 1947, is abolished, and the functions of the position are transferred to the division of forestry. However, as prescribed in article XI, section 4 of the Montana constitution and in section 81-103, R. C. M. 1947, the state board of land commissioners continues to retain the direction, control, leasing and sale of the state school lands and the land granted for the support and benefit of the various educational institutions and state lands; any functions performed by the division of forestry relating to these lands are subject to the direction and control of the



state board of land commissioners. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the position of state forester means the division of forestry within the department of natural resources and conservation.

**History:** En. 82A-1505 by Sec. 1, Ch. 272, L. 1971.

**82A-1506. Additional functions transferred to division.** The functions of the state soil conservation committee, created in Title 76, chapter 1, R. C. M. 1947, are transferred to the division of conservation districts. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state soil conservation committee means the division of conservation districts of the department of natural resources and conservation.

**History:** En. 82A-1506 by Sec. 1, Ch. 272, L. 1971.

**82A-1507. State soil conservation committee—continued—membership—functions.** (1) The state soil conservation committee, created in Title 76, chapter 1, R. C. M. 1947, is continued.

(2) Committee membership remains as prescribed in section 76-104, R. C. M. 1947.

(3) After the effective date of this chapter, appointed committee members serve at the pleasure of the governor.

(4) The committee shall act in an advisory capacity to the department on matters relating to soil conservation districts.

(5) Subsection (5) through (8) of section 82A-110 of this act applies to the committee and members.

**History:** En. 82A-1507 by Sec. 1, Ch. 272, L. 1971.

**82A-1508. Oil and gas conservation commission—continued—renamed board of oil and gas—transfer—designation.** (1) The oil and gas conservation commission of the state of Montana, created in Title 60, chapter 1, R. C. M. 1947, and its functions are continued, and the commission is renamed the board of oil and gas conservation. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the oil and gas conservation commission of the state of Montana means the board of oil and gas conservation.

(2) The board is transferred to the department for administrative purposes only as prescribed in section 82A-108 of this act. However, the board may hire its own personnel, and section 82A-108(2)(d) of this act does not apply.

(3) The board is designated as a quasi-judicial board for purposes of section 82A-112 of this act.

**History:** En. 82A-1508 by Sec. 1, Ch. 272, L. 1971.

**82A-1509. Board of natural resources and conservation—creation—composition—designation.** (1) There is created a board of natural resources and conservation.

(2) The board is composed of five (5) members, appointed by the governor as prescribed in section 82A-112 of this act, informed and experienced in the subjects of natural resources and conservation. One member shall be appointed from each of the five (5) districts prescribed in section 26-102(1), R. C. M. 1947.

(3) The board is designated as a quasi-judicial board for purposes of section 82A-112 of this act.

**History:** En. 82A-1509 by Sec. 1, Ch. 272, L. 1971.

#### **82A-1510. Director of natural resources and conservation—creation.**

There is created the position of director of natural resources and conservation. The director shall be appointed by the governor in the manner set forth in section 82A-106 of this act for directors who are department heads. Section 82A-107 of this act applies to the director as a department head, subject to the concurrence of the board of natural resources and conservation. The director is the chief administrative officer of the department, and in addition he shall perform those functions that are delegated to him by the board of natural resources and conservation.

**History:** En. 82A-1510 by Sec. 1, Ch. 272, L. 1971.

**82A-1511. Additional agencies abolished.** The following agencies are abolished:

(1) The council on natural resources and development, created in section 82-3001, R. C. M. 1947.

(2) The outdoor recreation advisory and planning committee, created in section 62-404, R. C. M. 1947.

(3) The weather modification advisory committee, provided for in section 89-312, R. C. M. 1947.

**History:** En. 82A-1511 by Sec. 1, Ch. 272, L. 1971.

### CHAPTER 16—DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING

#### Section

- 82A-1601. Department of professional and occupational licensing—creation—head.
- 82A-1602. Department—agencies transferred to.
- 82A-1603. Department—duties.
- 82A-1604. Director—duties.
- 82A-1605. Boards within department—duties.
- 82A-1606. Board within department—composition—ete.

**82A-1601. Department of professional and occupational licensing—creation—head.** There is created a department of professional and occupational licensing. The department head is a director of professional and occupational licensing appointed by the governor in accordance with section 82A-106 of this act.

**History:** En. 82A-1601 by Sec. 1, Ch. 272, L. 1971.

**82A-1602. Department—agencies transferred to.** The following agencies are continued, are transferred to the department for administrative purposes only as prescribed in section 82A-108 of this act, and are renamed as indicated:

(1) Abstracters board of examiners, created in Title 66, chapter 21, R. C. M. 1947, renamed the board of abstracters. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the abstracters board of examiners means the board of abstracters.

(2) State board of public accountancy, created in Title 66, chapter 18, R. C. M. 1947, renamed the board of public accountants. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of public accountancy means the board of public accountants.

(3) Board of architectural examiners, provided for in Title 66, chapter 1, R. C. M. 1947, renamed the board of architects. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the board of architectural examiners means the board of architects.

(4) State athletic commission, created in Title 82, chapter 3, R. C. M. 1947, renamed the board of athletics. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state athletic commission means the board of athletics.

(5) Board of barber examiners, created in Title 66, chapter 4, R. C. M. 1947, renamed the board of barbers. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the board of barber examiners means the board of barbers.

(6) State board of chiropody medical examiners, created in Title 66, chapter 6, R. C. M. 1947, renamed the board of chiropedists. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of chiropody medical examiners means the board of chiropedists.

(7) State board of chiropractic examiners, created in Title 66, chapter 5, R. C. M. 1947, renamed the board of chiropractors. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of chiropractic examiners means the board of chiropractors.

(8) Montana state examining board of cosmetology, created in Title 66, chapter 8, R. C. M. 1947, renamed the board of cosmetologists. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana state examining board of cosmetology means the board of cosmetologists.

(9) State board of dental examiners of the state of Montana, created in Title 66, chapter 9, R. C. M. 1947, renamed the board of dentists. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of dental examiners of the state of Montana means the board of dentists.

(10) State electrical board, created in Title 66, chapter 28, R. C. M. 1947, renamed the board of electricians. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state electrical board, except the references relating to the functions of making



inspections of electrical installations and issuing tags and charging fees therefor or of establishing an electrical code, transferred to the department of law enforcement and public safety in chapter 12 of this act, means the board of electricians.

(11) State board of registration for professional engineers and land surveyors, created in Title 66, chapter 23, R. C. M. 1947, renamed the board of professional engineers and land surveyors. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of registration for professional engineers and land surveyors means the board of professional engineers and land surveyors.

(12) Montana board of hearing aid dispensers, created in Title 66, chapter 30, R. C. M. 1947, renamed the board of hearing aid dispensers. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana board of hearing aid dispensers means the board of hearing aid dispensers.

(13) Montana horse racing commission, created in Title 62, chapter 5, R. C. M. 1947, renamed the board of horse racing. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana horse racing commission means the board of horse racing.

(14) State board of massage examiners, created in Title 66, chapter 29, R. C. M. 1947, renamed the board of masseurs. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of massage examiners means the board of masseurs.

(15) Montana state board of medical examiners, created in Title 66, chapter 10, R. C. M. 1947, renamed the board of medical doctors. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana state board of medical examiners means the board of medical doctors.

(16) State board of morticians, created in Title 66, chapter 27, R. C. M. 1947, renamed the board of morticians. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the board of morticians means the board of morticians.

(17) State board of examiners for nursing home administrators, created in Title 66, chapter 31, R. C. M. 1947, renamed the board of nursing home administrators. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of examiners for nursing home administrators means the board of nursing home administrators.

(18) Montana state board of nursing, created in Title 66, chapter 12, R. C. M. 1947, renamed the board of nurses. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana state board of nursing means the board of nurses.

(19) Montana state board of examiners in optometry, created in Title 66, chapter 13, R. C. M. 1947, renamed the board of optometrists. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana state board of examiners in optometry means the board of optometrists.

(20) State board of osteopathic examiners, provided for in Title 66, chapter 14, R. C. M. 1947, renamed the board of osteopaths. Unless incon-

sistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of osteopathic examiners means the board of osteopaths.

(21) Montana state board of pharmacy, created in Title 66, chapter 15, R. C. M. 1947, renamed the board of pharmacists. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana state board of pharmacy means the board of pharmacists.

(22) Board of plumbing examiners (or the state plumbing board), provided for in Title 66, chapter 24, R. C. M. 1947, renamed the board of plumbers. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the board of plumbing examiners or the state plumbing board means the board of plumbers.

(23) Montana real estate commission, created in Title 66, chapter 19, R. C. M. 1947, renamed the board of real estate. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana real estate commission means the board of real estate.

(24) State board of veterinary medical examiners, created in Title 66, chapter 22, R. C. M. 1947, renamed the board of veterinarians. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of veterinary medical examiners means the board of veterinarians.

(25) Board of certification for water and waste water operators, provided for in Title 69, chapter 59, R. C. M. 1947, renamed the board of water and waste water operators. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the board of certification for water and waste water operators means the board of water and waste water operators.

(26) Water well contractors' examining board of the state of Montana, created in Title 66, chapter 26, R. C. M. 1947, renamed the board of water-well contractors. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the water-well contractors' examining board of the state of Montana means the board of water-well contractors.

**History:** En. 82A-1602 by Sec. 1, Ch. 272, L. 1971.

**82A-1603. Department—duties.** In addition to the provisions of section 82A-108 of this act, the department shall:

(1) Provide all the administrative and clerical services needed by the boards within the department, including corresponding, taking applications for licenses, issuing licenses granted by the boards, renewing licenses, registering, taking minutes of board meetings and hearings, and filing.

(2) Standardize and keep in Helena all official records of the boards.

(3) Make arrangements and provide facilities in Helena for the meetings, hearings, and examinations of each board, or elsewhere in the state if requested by the board.

(4) Administer and grade examinations required by each board or by law for licensing, unless the board determines that experts or professionals are necessary to administer or grade a particular examination.

(5) At the request of a board, investigate complaints received by the department of illegal or unethical conduct of a member of the profession or occupation under the jurisdiction of a board within the department.

(6) Assess the costs of the department to the boards on a prorata basis according to the number of man days and the actual operating costs of the department for each board.

**History:** En. 82A-1603 by Sec. 1, Ch. 272, L. 1971.

**82A-1604. Director—duties.** In addition to his powers and duties under sections 82A-107 and 82A-108 of this act, the director shall:

(1) Appoint impartial legal counsel to conduct hearings before each board within the department whenever any board holds a hearing. The legal counsel appointed shall see that hearings are conducted in a proper and legal manner.

(2) Whenever the department conducts an investigation of a complaint of illegal or unethical conduct of a member of a particular profession or occupation as prescribed in section 82A-1603(5) of this chapter, and if requested by the appropriate board, appoint an impartial member of that profession or occupation to assist the department in its investigation. The member so appointed may not be a member of the board having jurisdiction over the particular profession or occupation.

(3) Hire all personnel to perform the administrative and clerical functions of the department for the boards. Boards within the department have no authority to hire personnel.

**History:** En. 82A-1604 by Sec. 1, Ch. 272, L. 1971.

**82A-1605. Boards within department—duties.** Except for the inspection and code-making functions of the state electrical board transferred to the department of law enforcement and public safety and enumerated in chapter 12 of this act, and subject to the administrative control of the department and the director of professional and occupational licensing as set forth in section 82A-108 of this act and under this chapter, each agency transferred to the department shall continue to exercise its prescribed statutory functions. In addition, each board within the department shall:

(1) Set and enforce standards, rules, and regulations governing the licensing, certification, registration, and conduct of the members of the particular profession or occupation within its jurisdiction.

(2) Sit in judgment in hearings for the suspension, revocation, or denial of a license of an actual or potential member of the particular profession or occupation within its jurisdiction. The hearings shall be conducted by the legal counsel appointed under section 82A-1604(1) of this chapter.

(3) Pay to the department its pro rata share of the assessed costs of the department under section 82A-1603(6).

**History:** En. 82A-1605 by Sec. 1, Ch. 272, L. 1971.



**82A-1606. Board within department—composition, etc.** The members of boards within the department before the effective date of this chapter continue as members for the remainder of their terms. The composition, qualifications, method of appointment, terms of office, compensation, and reimbursement of the members of the boards within the department remain as prescribed by law, except:

(1) The executive officer of the Montana state department of health, or his designee, and the administrator of the Montana state department of public welfare, or his designee, are replaced by the director of the department of health and environmental sciences, or his designee, and the director of the department of social and rehabilitation services, or his designee, respectively, on the Montana state board of examiners for nursing home administrators, renamed the board of nursing home administrators in this chapter.

(2) The appointed representative of the state board of health is replaced by the appointed representative of the department of health and environmental sciences on the board of plumbing examiners, renamed the board of plumbers in this chapter.

(3) The director of the division of environmental sanitation or a qualified member of his staff appointed by the director is replaced by the administrator of the division of environmental sciences of the department of health and environmental sciences or a qualified member of his staff appointed by the administrator on the board of certification for water and waste water operators, renamed the board of water and waste water operators in this chapter.

(4) The state engineer and the director of the division of environmental sanitation of the state board of health are replaced by the administrator of the division of water resources of the department of natural resources and conservation and the administrator of the division of environmental sciences of the department of health and environmental sciences, respectively, on the water well contractors' examining board of the state of Montana, renamed the board of water-well contractors in this chapter.

**History:** En. 82A-1606 by Sec. 1, Ch. 272, L. 1971.

## CHAPTER 17—DEPARTMENT OF PUBLIC SERVICE REGULATION

### Section

82A-1701. Department of public service regulation—creation—head.

82A-1702. Public service commission—continued—composition.

82A-1703. Board of railroad commissioners abolished—functions transferred to department.

**82A-1701. Department of public service regulation—creation—head.** There is created a department of public service regulation. The department head is the public service commission provided for in section 82A-1702 of this chapter.

**History:** En. 82A-1701 by Sec. 1, Ch. 272, L. 1971.

**82A-1702. Public service commission—continued—composition.** (1) The public service commission, created in Title 70, chapter 1, R. C. M. 1947, and its functions are continued.

(2) The composition, method of selection, and terms of office of members of the commission remain as prescribed in section 72-101, R. C. M. 1947. Members of the board of railroad commissioners ex officio public service commission before the effective date of this chapter continue as members of the public service commission for the remainder of their terms.

**History:** En. 82A-1702 by Sec. 1, Ch. 272, L. 1971.

**82A-1703. Board of railroad commissioners abolished—functions transferred to department.** The board of railroad commissioners of the state of Montana, created in Title 72, chapter 1, R. C. M. 1947, is abolished, and its function are transferred to the public service commission. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the board of railroad commissioners means the public service commission.

**History:** En. 82A-1703 by Sec. 1, Ch. 272, L. 1971.

#### CHAPTER 18—DEPARTMENT OF REVENUE

##### Section

- 82A-1801. Department of revenue—creation—head.
- 82A-1802. Additional functions transferred to department.
- 82A-1803. Functions of the state board of equalization continued.
- 82A-1804. Director of revenue—creation.
- 82A-1805. Montana liquor control board—continued—transfer—designation.
- 82A-1806. Multistate tax compact advisory committee abolished.

**82A-1801. Department of revenue—creation—head.** There is created a department of revenue. The department head is the state board of equalization, provided for in article XII, section 15 of the Montana constitution.

**History:** En. 82A-1801 by Sec. 1, Ch. 272, L. 1971.

**82A-1802. Additional functions transferred to department.** The functions of the secretary of state, which are contained in section 14-528, R. C. M. 1947 (pertaining to rural electric and telephone cooperatives license tax), are transferred to the department. Unless inconsistent with this act, any reference to the secretary of state in section 14-528, R. C. M. 1947, means the department of revenue.

**History:** En. 82A-1802 by Sec. 1, Ch. 272, L. 1971.

**82A-1803. Functions of the state board of equalization continued.** (1) The functions of the state board of equalization are continued in the board, which board is created in article XII, section 15 of the Montana constitution.

(2) The board shall appoint an advisory council for the purpose of complying with article VI, section 1(b) of the multi-state tax compact, section 84-6701, R. C. M. 1947. The council shall be appointed in accordance with the provisions of section 82A-110 of this act.

History: En. 82A-1803 by Sec. 1, Ch. 272, L. 1971.

**82A-1804. Director of revenue—creation.** (1) There is created the position of director of revenue.

(2) The director is the chief administrative officer of the department under the direction of the state board of equalization and he shall perform those functions that are delegated to him by the board and in addition shall prepare revenue estimates of state revenue from all sources and shall continuously study fiscal problems and tax structures of state and local governments and submit the studies to the governor and legislative assembly at their request.

(3) The director of revenue shall be appointed and serve as provided for directors in section 82A-106 of this act.

History: En. 82A-1804 by Sec. 1, Ch. 272, L. 1971.

**82A-1805. Montana liquor control board—continued—transfer—designation.** (1) The Montana liquor control board, created in Title 4, chapter 1, R. C. M. 1947, and its function are continued.

(2) The board is transferred to the department of revenue for administrative purposes only as prescribed in section 82A-108 of this act. However, the board may hire its own personnel, and section 82A-108 (2)(d) does not apply.

(3) The board is designated as a quasi-judicial board for purposes of section 82A-112 of this act.

History: En. 82A-1805 by Sec. 1, Ch. 272, L. 1971.

**82A-1806. Multistate tax compact advisory committee abolished.** The multistate tax compact advisory committee, provided for in section 84-6704, R. C. M. 1947, is abolished.

History: En. 82A-1806 by Sec. 1, Ch. 272, L. 1971.

#### CHAPTER 19—DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

##### Section

- 82A-1901. Department of social and rehabilitation services—creation—head.
- 82A-1902. Agencies abolished—functions transferred to department.
- 82A-1903. Additional functions transferred to department.
- 82A-1904. County departments of public welfare—continued—supervision.
- 82A-1905. Veterans' welfare commission—continued—renamed board of veterans' affairs—transfer.
- 82A-1906. Board of social and rehabilitation appeals—creation—allocation—composition—functions—designation.
- 82A-1907. Functions transferred to board of social and rehabilitation appeals.
- 82A-1908. Additional agencies abolished.



**82A-1901. Department of social and rehabilitation services—creation—head.** There is created a department of social and rehabilitation services. The department head is a director of social and rehabilitation services appointed by the governor in accordance with section 82A-106 of this act.

**History:** En. 82A-1901 by Sec. 1, Ch. 272, L. 1971.

**82A-1902. Agencies abolished—functions transferred to department.**

(1) The state department of public welfare and its units, including the state board of public welfare and the state administrator of public welfare, created in Title 71, chapter 2, R. C. M. 1947, are abolished, and their functions, except the quasi-judicial functions transferred to the board of social and rehabilitation appeals in section 82A-1907 of this chapter, are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state department of public welfare, the state board of public welfare, or the state administrator of public welfare, except references relating to the quasi-judicial functions transferred to the board of social and rehabilitation appeals in section 82A-1907 of this chapter, means the department of social and rehabilitation services.

(2) The division of vocational rehabilitation, created in Title 41, chapter 8, R. C. M. 1947, under the jurisdiction of the state board of education, is abolished, and its functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the division of vocational rehabilitation means the department of social and rehabilitation services.

(3) The commission on aging, created in Title 82, chapter 35, R. C. M. 1947, is abolished, and its functions, except the quasi-judicial functions transferred to the board of social and rehabilitation appeals in section 82A-1907 of this chapter, are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the commission on aging, except the references relating to the quasi-judicial functions transferred to the board of social and rehabilitation appeals in section 82A-1907 of this chapter, means the department of social and rehabilitation services.

(4) The council on human resources, administratively created, is abolished, and its functions are transferred to the department.

**History:** En. 82A-1902 by Sec. 1, Ch. 272, L. 1971.

**82A-1903. Additional functions transferred to department.** The functions of the state board of education which are contained in Title 41, chapter 8, R. C. M. 1947 (pertaining to vocational rehabilitation and education), except the quasi-judicial functions transferred to the board of social and rehabilitation appeals in section 82A-1907 of this chapter, are transferred to the department. Unless inconsistent with this act, any reference in Title 41, chapter 8, R. C. M. 1947, to the state board of education, except the references relating to the quasi-judicial functions transferred to the board of social and rehabilitation appeals in section 82A-

1907 of this chapter, means the department of social and rehabilitation services.

History: En. 82A-1903 by Sec. 1, Ch. 272, L. 1971.

**82A-1904. County departments of public welfare—continued—supervision.** The county departments of public welfare, including the county boards of public welfare, created in Title 71, chapter 2, R. C. M. 1947, are continued, and are under the supervision of the department.

History: En. 82A-1904 by Sec. 1, Ch. 272, L. 1971.

**82A-1905. Veterans' welfare commission—continued—renamed board of veterans' affairs—transfer.** (1) The veterans' welfare commission of the state of Montana, created in Title 77, chapter 10, R. C. M. 1947, and its functions are continued, and the commission is renamed the board of veterans' affairs. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the veterans' welfare commission of the state of Montana means the board of veterans' affairs.

(2) The board is transferred to the department for administrative purposes only as prescribed in section 82A-108 of this act. However, the board may hire its own personnel, and section 82A-108(2)(d) of this act does not apply.

(3) Members of the board before the effective date of this chapter serve for the remainder of their terms. The composition, method of appointment, terms of office, and qualifications of board members remain as prescribed in section 70-1001, R. C. M. 1947. Members shall be compensated and reimbursed as are members of advisory councils under section 82A-110 of this act.

History: En. 82A-1905 by Sec. 1, Ch. 272, L. 1971.

**82A-1906. Board of social and rehabilitation appeals—creation—allocation—composition—functions—designation.** (1) There is created a board of social and rehabilitation appeals.

(2) The board is allocated to the department for administrative purposes only as prescribed in section 82A-108 of this act.

(3) The board consists of three (3) members, appointed by the governor as prescribed in section 82A-112 of this act, as follows:

(a) The director of the department, who shall act as chairman of the board. The director does not have a term on the board as a board member, but shall serve at the pleasure of the governor.

(b) Two members of the general public.

(4) The board is designated as a quasi-judicial board for purposes of section 82A-112 of this act. For purposes of that section, a majority shall be considered as one (1).

History: En. 82A-1906 by Sec. 1, Ch. 272, L. 1971.

**82A-1907. Functions transferred to board of social and rehabilitation appeals.** (1) The quasi-judicial functions of the state department of

public welfare, including the state board of public welfare, which are contained in Title 71, chapters 2 through 7, 12, 14, and 15, R. C. M. 1947 (pertaining to public welfare), are transferred to the board of social and rehabilitation appeals. Unless inconsistent with this act, any reference in Title 71, chapters 2 through 7, 12, 14, and 15, R. C. M. 1947, to the state department of public welfare or to the state board of public welfare relating to the quasi-judicial functions transferred to the board of social and rehabilitation appeals means the board of social and rehabilitation appeals.

(2) The quasi-judicial functions of the state board of education, which are contained in Title 41, chapter 8, R. C. M. 1947 (pertaining to vocational rehabilitation and education), are transferred to the board of social and rehabilitation appeals. Unless inconsistent with this act, any reference in Title 41, chapter 8, R. C. M. 1947, to the state board of education relating to the quasi-judicial functions transferred to the board of social and rehabilitation appeals means the board of social and rehabilitation appeals.

(3) The quasi-judicial functions of the commission on aging, which are contained in the "State Plan for Aging" submitted to and approved by the administration on aging of the division of social and rehabilitative services of the United States department of health, education and welfare in 1965, are transferred to the board of social and rehabilitation appeals.

History: En. 82A-1907 by Sec. 1, Ch. 272, L. 1971.

**82A-1908. Additional agencies abolished.** The following agencies are abolished:

(1) The day care advisory council, provided for in section 10-803, R. C. M. 1947.

(2) The personnel committee of the department of public welfare, administratively created.

(3) The educational leave committee of the department of public welfare, administratively created.

(4) The advisory committee on children and youth of the council on human resources, administratively created.

(5) The medical assistance advisory council, provided for in section 71-1513, R. C. M. 1947.

History: En. 82A-1908 by Sec. 1, Ch. 272, L. 1971.

## CHAPTER 20—DEPARTMENT OF FISH AND GAME

- Section  
 82A-2001. Department of fish and game—creation—head.  
 82A-2002. Functions transferred to department.  
 82A-2003. Director of fish and game department—continued.  
 82A-2004. State fish and game commission—continued—functions—designation.

**82A-2001. Department of fish and game—creation—head.** There is created a department of fish and game. The department head is the state



fish and game commission provided for in section 82A-2004 of this chapter, but section 82A-107 of this act does not apply to the commission as a department head.

History: En. 82A-2001 by Sec. 1, Ch.  
272, L. 1971.

**82A-2002. Functions transferred to department.** The fish and game department, provided for in Title 26, chapter 1, R. C. M. 1947, and its units are abolished, and their functions are transferred to the department of fish and game created in this chapter. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the fish and game department means the department of fish and game created in this chapter.

History: En. 82A-2002 by Sec. 1, Ch.  
272, L. 1971.

**82A-2003. Director of fish and game department—continued.** The position of state fish and game director and its functions are continued. The state fish and game director before the effective date of this chapter continues as the state fish and game director, until the first Monday of January, 1973, and until his successor is appointed and qualified. Thereafter, the director shall be appointed by the governor in the manner set forth in section 82A-106 of this act, except that the director shall serve for a term concurrent with that of the governor's term, and the director may be removed from office by the governor only for neglect of duty, incompetency or other good cause, and after a full hearing on verified charges filed at least twenty (20) days before said hearing and served on said officer at least twenty (20) days before said hearing. The state fish and game director is not a department head for purposes of section 82A-107 of this act.

History: En. 82A-2003 by Sec. 1, Ch.  
272, L. 1971.

**82A-2004. State fish and game commission—continued—functions—designation.** (1) The state fish and game commission, created in Title 26, chapter 1, R. C. M. 1947, and its functions, except the function of appointing and removing the state fish and game director provided for in section 26-106, R. C. M. 1947, are continued.

(2) The state fish and game commission is designated as a quasi-judicial board for purposes of section 82A-112 of this act.

History: En. 82A-2004 by Sec. 1, Ch.  
272, L. 1971.

#### CHAPTER 21—MISCELLANEOUS TRANSFERS

##### Section

- 82A-2101. Federal-state co-ordinator transferred to governor's office.  
82A-2102. Board of state canvassers transferred to secretary of state.  
82A-2103. State board of hail insurance—continued—transfer.

**82A-2101. Federal-state co-ordinator transferred to governor's office.** The office of the federal-state co-ordinator, administratively created, is transferred to the office of the governor.

**History:** En. 82A-2101 by Sec. 1, Ch. 272, L. 1971.

**82A-2102. Board of state canvassers transferred to secretary of state.** The board of state canvassers, created in section 23-4016, R. C. M. 1947, is transferred to the office of the secretary of state.

**History:** En. 82A-2102 by Sec. 1, Ch. 272, L. 1971.

**82A-2103. State board of hail insurance—continued—transfer.** (1) the state board of hail insurance, created in Title 82, chapter 15, R. C. M. 1947, and its functions are continued.

(2) The board is transferred to the office of the state auditor for administrative purposes only as prescribed in section 82A-108 of this act. For purposes of this subsection and section 82A-108, the state auditor and the office of the state auditor shall be considered to be a department head and a department, respectively.

(3) Members of the board before the effective date of this chapter serve for the remainder of their terms. The composition, method of appointment, terms of office, compensation, reimbursement, and qualifications of board members remain as prescribed by law.

**History:** En. 82A-2103 by Sec. 1, Ch. 272, L. 1971.

**Repealing Clause**

Section 2 of Ch. 272, Laws 1971 read "Section 27-427, R. C. M. 1947, is repealed."

## TITLE 83—STATE SOVEREIGNTY AND JURISDICTION

### Chapter

1. Sovereignty and territorial jurisdiction of the state, 83-114.
9. Assignment of claims against state, 83-901 to 83-904.

### CHAPTER 1—SOVEREIGNTY AND TERRITORIAL JURISDICTION OF THE STATE

#### Section

83-114. Acceptance of concurrent jurisdiction over Veterans Administration Center.

#### 83-108. (25) Jurisdiction over lands purchased by United States.

##### References

State ex rel. Parker v. District Court,  
147 M 151, 410 P 2d 459.

**83-114. Acceptance of concurrent jurisdiction over Veterans Administration Center.** The state of Montana hereby accepts the cession of concurrent jurisdiction with the United States over the real property comprising the Veterans Administration Center, Fort Harrison, Montana as ceded by Public Law 91-45; 83 Stat. 48, which was approved July 19, 1969, and made effective upon acceptance of the cession by the state of Montana.

**History:** En. Sec. 1, Ch. 157, L. 1971.

##### Title of Act

An act accepting the cession of concurrent jurisdiction with the United States over the real property comprising the Veterans Administration Center, Fort Harrison, Montana; and providing an effective date.

##### Effective Date

Section 2 of Ch. 157, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 1, 1971.

### CHAPTER 9—ASSIGNMENT OF CLAIMS AGAINST STATE

#### Section

- 83-901. Notice to state auditor.  
83-902. Limitations on assignment.  
83-903. Power of state auditor to promulgate rules.  
83-904. Effect of assignment.

**83-901. Notice to state auditor.** All transfers and assignments made of any claim against the state of Montana, or any part thereof, or interest thereon, except as hereinafter provided, shall be absolutely null and void and unenforceable against the state of Montana unless the assignee thereof files written notice of the assignment on such forms as may be required by the state auditor, together with a true copy of the instrument of assignment.

**History:** En. Sec. 1, Ch. 44, L. 1967.

##### Title of Act

An act to require assignees of moneys



due from the state of Montana to file written notice of assignment and a copy of the assignment instrument with the state auditor; restricting multiple assignments; authorizing promulgation of rules

and regulations for such assignments by the state auditor; and allowing deductions to be made from salaries of employees of the state for specified purposes.

**83-902. Limitations on assignment.** Unless otherwise expressly permitted by the state auditor, no more than one assignment of a claim shall be effective at one time, and no assignment shall be made to more than one party, except that an assignment may be made to one party as agent or trustee for two (2) or more parties. An assignment shall not be subject to further assignment.

**History:** En. Sec. 2, Ch. 44, L. 1967.

**83-903. Power of state auditor to promulgate rules.** The state auditor may promulgate rules and regulations regarding the form of assignment, the procedures for filing assignments, and the submission of claims covering assigned funds.

**History:** En. Sec. 3, Ch. 44, L. 1967.

**83-904. Effect of assignment.** Nothing contained herein shall in any way impair the negotiability of state warrants, nor preclude employees of the state of Montana from authorizing deductions from salaries for employees group insurance programs authorized by law, union dues, or purchase of U.S. government savings bonds.

**History:** En. Sec. 4, Ch. 44, L. 1967.

















# REVISED CODES OF MONTANA

## VOLUME 5

### Part 2

### 1971 Cumulative Pocket Supplement

#### *Containing*

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE  
LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF  
REPLACEMENT VOLUME 5 (PART 2) OF  
THE 1947 REVISED CODES

#### AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 5  
(PART 2) THROUGH VOLUME 478, PACIFIC  
REPORTER (2ND SERIES)

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# REVISED CODES OF MONTANA

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### CHAPTER 1—DEFINITION OF TERMS

#### Section

- 84-101. Definition of terms.

**84-101. (1996) Definition of terms.** Whenever the terms mentioned in this section are employed in dealing with the subject of taxation, they are employed in the sense hereafter affixed to them.



First and Second. \* \* \* [Same as parent volume.]

Third—The term “improvements” includes all buildings, structures, mobile homes, fixtures, fences, and improvements, including mobile homes, situated upon, erected upon or affixed to the land, whether title has been acquired to said land or not.

Fourth to Sixth. \* \* \* [Same as parent volume.]

Seventh—The term “mobile home” means forms of housing known as “trailers,” “house trailers” or “trailer coaches” exceeding eight (8) feet in width or thirty-two (32) feet in length designed to be moved from one place to another by an independent power connected thereto.

**History:** En. Sec. 4, p. 74, L. 1891; re-en. Sec. 3680, Pol. C. 1895; re-en. Sec. 2501, Rev. C. 1907; re-en. Sec. 1996, R. C. M. 1921; amd. Sec. 1, Ch. 99, L. 1939; amd. Sec. 1, Ch. 296, L. 1967. Cal. Pol. C. Sec. 3617.

#### Amendments

The 1967 amendment, in the paragraph beginning “Third,” inserted “mobile homes” after “structures”; inserted “including mobile homes, situated upon” after “improvements”; and added the paragraph beginning “Seventh.”

## CHAPTER 2—PROPERTY SUBJECT TO TAXATION—BASIS FOR TAXATION

### Section

- 84-207. Privilege tax upon possession and use of tax-exempt property—exceptions.
- 84-208. Rate of tax same as ad valorem property tax—credit against tax on use of federally owned property.
- 84-209. Assessment—collection and distribution—taxes shall not become a lien against property.
- 84-210. Failure to pay tax—remedies of county.
- 84-211. Exemptions granted in the constitution of the state of Montana.

## 84-202. (1998) Exemptions from taxation.

### “Educational Purposes”

The term “educational purposes,” as used in section 2, article XII of the constitution and this section, exempting property used exclusively for “educational purposes” from taxation, is not defined in terms of common scholastic institutions of grammar school, high school and university or college. Organizations for the social, intellectual, physical, or religious welfare of the children are exempt equally. Flathead Lake Methodist Camp v. Webb, 144 M 565, 399 P 2d 90.

Religious education is exempt as an “educational purpose” and not as “actual religious worship” even though elements of the latter may be present and may serve to strengthen the exemption of all the property. Flathead Lake Methodist Camp v. Webb, 144 M 565, 399 P 2d 90.

### “Exclusive Use” Defined

The words “exclusive use” consistently have been held to mean the primary and inherent use and not the mere secondary or incidental uses of the property. Flathead Lake Methodist Camp v. Webb, 144 M 565, 399 P 2d 90.

### Exemption of Church Camp

Where church summer camp, containing twenty-two acres of land and twenty-eight improvements, was “exclusively used for educational purposes” within the meaning of this section and section 2, article XII of the Montana constitution, it was exempt from taxation. Flathead Lake Methodist Camp v. Webb, 144 M 565, 399 P 2d 90.

### Extent of Exemption

When exempting an institution of charity, sufficient residence and recreation area may also be exempt. Flathead Lake Methodist Camp v. Webb, 144 M 565, 399 P 2d 90.

### Limits of Public Charity

An institution of purely public charity, which is exempt from taxation under section 2, article XII of the constitution and this section, may be devoted to bringing people under religious influence, the beneficiaries of the charity may pay a small portion of the cost, and the activity may be limited to a particular class so long as the numbers who may participate remain somewhat indefinite. Flathead

Lake Methodist Camp v. Webb, 144 M 565, 399 P 2d 90.

#### Nonprofit Foundation

Nonprofit foundation operating and maintaining home for aged was entitled to tax exemption under statute granting

exemption to institutions of purely public charity, notwithstanding evidence that foundation charged fees and imposed admission requirements, Bozeman Deaconess Foundation v. Ford, 151 M 143, 439 P 2d 915.

**84-207. Privilege tax upon possession and use of tax-exempt property—exceptions.** From and after the effective date of this act there is imposed and there shall be collected a tax upon the possession or other beneficial use enjoyed by any private individual, association, or corporation of any property, real or personal, which for any reason is exempt from taxation. No tax shall be imposed upon the possession or other beneficial use of public lands occupied under the terms of mineral, timber or grazing leases or permits issued by the United States or the state of Montana or upon any easement unless the lease, permit or easement entitles the lessee or permittee to exclusive possession of the premises to which the lease, permit or easement relates.

**History:** En. Sec. 1, Ch. 370, L. 1969.

#### Compiler's Notes

This act became effective March 17, 1969.

#### Title of Act

An act to provide a privilege tax upon

possession and use of tax-exempt property; providing exceptions thereto; fixing the rate of such tax and credit against tax; providing for assessment, collection and distribution of said taxes; providing penalties for failure to pay the tax and preserving constitutional exemption, and providing an effective date.

**84-208. Rate of tax same as ad valorem property tax—credit against tax on use of federally owned property.** The tax imposed upon such possession or other beneficial use of tax-exempt property shall be in the same amount and to the same extent as the ad valorem property tax would be if the possessor or user were the owner thereof; provided that there shall be credited against the tax so imposed upon the beneficial use of property owned by the federal government the amount of payments which are made in lieu of taxes.

**History:** En. Sec. 2, Ch. 370, L. 1969.

**84-209. Assessment—collection and distribution—taxes shall not become a lien against property.** The tax imposed hereunder shall be assessed to such possessors or users of the tax-exempt property upon the same forms, and shall be collected and distributed at the same time and in the same manner as taxes assessed to owners, possessors, or other claimants of property which is subject to ad valorem taxation, except that such taxes shall not become a lien against the property, and no such tax-exempt property may be attached, encumbered, sold or otherwise affected for the collection of the tax imposed hereunder.

**History:** En. Sec. 3, Ch. 370, L. 1969.

**84-210. Failure to pay tax—remedies of county.** A tax due and unpaid under this act shall constitute a debt due the county for and on behalf of the various taxing units concerned in the tax. If the tax imposed by this

act or any portion thereof is not paid at the time the same becomes delinquent the county auditor may issue a warrant in the name of the county directed to the clerk of the district court in his county and thereupon the clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the delinquent taxpayer mentioned in the warrant and, in the appropriate columns, the amount of tax, penalties, interest and other costs for which the warrant is issued and the date when such warrant is filed, and thereupon the warrant so docketed shall have the force and effect of a judgment duly rendered by a district court and docketed in the office of the clerk thereof, and the county shall have the same remedies against the possessor user as any other judgment docket.

**History:** En. Sec. 4, Ch. 370, L. 1969.

**84-211. Exemptions granted in the constitution of the state of Montana.** Nothing contained herein shall be construed as limiting or repealing the exemptions granted in article XII, section 2 of the constitution of the state of Montana.

**History:** En. Sec. 5, Ch. 370, L. 1969.

**Effective Date**

Section 6 of Ch. 370, Laws 1969 provided

the act should be in effect from and after its passage and approval. Approved March 17, 1969.

#### CHAPTER 3—CLASSIFICATION OF PROPERTY FOR TAXATION— BASIS FOR TAXATION

Section

84-301. Classification of property for taxation.

84-302. Basis for imposition of taxes.

84-307. Assessment of shares of banks—deductions.

**84-301. (1999) Classification of property for taxation.** For the purpose of taxation the taxable property in the state shall be classified as follows:

Class One. \* \* \* [Same as parent volume.]

Class Two. All household goods and furniture, including clocks, musical instruments, sewing machines, wearing apparel of members of the family, and all personal property actually used by the owner for personal and domestic purposes, or for the furnishing or equipment of the family residence; all agricultural and other tools, implements and machinery, gas and other engines and boilers, threshing machines and outfits used therewith, automobiles, motor trucks and other power-driven cars, vehicles of all kinds except mobile homes, boats and all watercraft, harness, saddlery and robes and except as provided in Class Five (b) of this section, all poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property used and owned by all persons, firms, corporations, and other organizations which are engaged in the business of furnishing telephone communications, exclusively to rural areas, or to rural areas and cities and towns provided that any such city or town has a population of eight hundred (800) persons or less; and provided further,



that the average circuit miles for each station on the system is more than one and one-quarter ( $1\frac{1}{4}$ ) miles.

Class Three. Livestock, poultry and unprocessed products of both; stocks of merchandise of all sorts, together with furniture and fixtures used therewith, except mobile homes; and all office or hotel furniture and fixtures.

Class Four. (a) All land, town and city lots, with improvements, and all trailers affixed to land owned, leased, or under contract or purchase by the trailer owner, manufacturing and mining machinery, fixtures and supplies, except as otherwise provided by the constitution of Montana, and except as such property may be included in Class Five, Class Seven or Class Eight.

(b) Mobile homes without regard to the ownership of the land upon which they are situated, except those held by a distributor or dealer of mobile homes as part of his stock in trade, and except as such property may be included in Class Eight.

Class Five. (a) \* \* \* [Same as parent volume.]

(b) All poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property used and owned by co-operative rural electrical and co-operative rural telephone associations organized under the laws of Montana except those within the incorporated limits of a city or town in which less than ninety-five per cent (95%) of the electric consumers and/or telephone users are served by a co-operative organization, and as to the property enumerated in this subsection (b) within incorporated limits of a city or town in which less than ninety-five per cent (95%) of the electric consumers or users will be served by a co-operative organization, such property shall be put in Class Two.

(c) \* \* \* [Same as parent volume.]

(d) The dwelling house, and the lot on which it is erected, owned and occupied by any resident of the state, who has been honorably discharged from active service in any branch of the armed forces, who is rated one hundred per cent (100%) disabled due to a service-connected disability by the United States veterans administration or its successors.

In the event of the veteran's death, the dwelling house, and the lot on which it is erected, so long as the widow remains unmarried and the owner and occupant of the property, shall remain within this classification.

Class Six. Property formerly included in this class is now classified by section 84-308, R. C. M. 1947.

Class Seven. (a) All new industrial property. New industrial property shall mean any new industrial plant, including land, buildings, machinery and fixtures which, in the determination of the state board of equalization, is used by a new industry during the first three (3) years of operation not having been assessed prior to July 1, 1961, within the state of Montana. New industry shall mean any person, corporation, firm,

partnership, association, or other group which establishes a new plant or plants in this state for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or merger of an existing industry or industries. Provided, however, that new industrial property shall be limited to industries that manufacture, mill, mine, produce, process or fabricate materials, or do similar work in which capital and labor are employed and in which materials unserviceable in their natural state are extracted, processed or made fit for use or are substantially altered or treated so as to create commercial products or materials; and in no event shall the term new industrial property be included to mean property used by retail or wholesale merchants, commercial services of any type, agriculture, trades or professions. And provided further, that new industrial property shall not be included to mean property which is used or employed in any industrial plant which has been in operation in this state for three (3) years or longer. Any person, corporation, firm, partnership, association or other group seeking to qualify its property for inclusion in this class shall make application to the state board of equalization in such manner and form as may be required by said board.

Class Eight. Any improvement on real property, trailers affixed to land or mobile home belonging to any person who qualifies under any one or more of the hereinafter set forth categories, valued at not more than seventeen thousand five hundred dollars (\$17,500), which is owned or under a contract for deed, and which is actually occupied by:

(1) a widow sixty-two (62) years of age or older, whether with or without minor dependent children, who qualifies under the income limitations of (4), or

(2) a widower sixty-five (65) years of age or older, whether with or without minor dependent children, who qualifies under the income limitations of (4), or

(3) a widow with minor or dependent children regardless of age, who qualifies under the income limitations of (4), or

(4) a recipient of retirement benefits whose income from all sources is not more than four thousand dollars (\$4,000) for a single person and five thousand two hundred dollars (\$5,200) for a married couple per annum. Provided, further, that one who applies for classification of property under this class must make an affidavit before the county assessor of the county in which said property is located, on a form as may be provided by the state board of equalization supplied without cost to the applicant, as to his income, if applicable, as to his retirement benefits, if applicable, or, as to his marital status, if applicable, and to the fact that he or she actually occupies such improvements with right of the county welfare board to investigate the applicant, on the completion of the form, as to answers given on the form. Provided, further, that the value of said property shall not increase during the life of the recipient of retirement benefits or widow or widower covered under this class.

Class Nine. Freeport merchandise. Freeport merchandise means those stocks of merchandise manufactured or produced outside this state which are in transit through this state and consigned to a warehouse or

other storage facility, public or private, within this state, for storage in transit prior to shipment to a final destination outside the state, and which have acquired a taxable situs within the state.

Stocks of merchandise do not lose their status as freeport merchandise because while in the storage facility they are assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled or repackaged.

Any person, corporation, firm, partnership, association, or other group seeking to qualify its property for inclusion in this class shall make application to the state board of equalization in such manner or form as may be required by said board.

The state board of equalization shall establish standards, rules and regulations for the guidance of county assessors and assessing freeport merchandise.

**Class Ten.** All property not included in the nine (9) preceding classes.

**History:** En. Sec. 1, Ch. 51, L. 1919; amd. Sec. 1, Ch. 248, L. 1921; re-en. Sec. 1999, R. C. M. 1921; amd. Sec. 1, Ch. 130, L. 1937; amd. Sec. 1, Ch. 107, L. 1941; amd. Sec. 1, Ch. 286, L. 1947; amd. Sec. 1, Ch. 45, L. 1951; amd. Sec. 1, Ch. 178, L. 1951; amd. Sec. 1, Ch. 88, L. 1957; amd. Sec. 1, Ch. 103, L. 1961; amd. Sec. 2, Ch. 239, L. 1961; amd. Sec. 1, Ch. 168, L. 1965; amd. Sec. 1, Ch. 215, L. 1967; amd. Sec. 1, Ch. 294, L. 1967; amd. Sec. 2, Ch. 296, L. 1967; amd. Sec. 1, Ch. 292, L. 1969; amd. Sec. 1, Ch. 305, L. 1969; amd. Sec. 1, Ch. 35, L. 1971; amd. Sec. 1, Ch. 312, L. 1971; amd. Sec. 1, Ch. 317, L. 1971; amd. Sec. 1, Ch. 354, L. 1971.

#### Compiler's Notes

This section was amended four times in 1971, once by Ch. 35, once by Ch. 312, once by Ch. 317 and once by Ch. 354. None of the amendatory acts mentions nor incorporates the changes made by any of the others. Since there appears to be no conflict, the compiler has made a composite section embodying the changes made by all four amendatory acts.

#### Amendments

Chapter 215, Laws of 1967 deleted "with none other than his or her spouse, minor or dependent children, or persons not responsible for all or any part of the financial support of the affiant, and that the improvements are not used for income-producing purposes other than such purposes as are normally permitted in or on such improvements" after "occupies such improvements" in the next to last sentence of subparagraph (4) under Class Eight.

Chapter 294, Laws of 1967, in the subsection beginning "Class Seven" designated the first paragraph as "(a)," and added subdivision (b); in the subsection beginning "Class Eight" deleted "or" before

"dependent" in subdivision (2); and made minor changes in style.

Chapter 296, Laws of 1967 in the paragraph beginning "Class Two," inserted "except mobile homes" after "vehicles of all kinds"; in the paragraph beginning "Class Three," inserted "except mobile homes" after "used therewith" and in the paragraph beginning "Class Four," designated the first paragraph as subparagraph (a), and added subparagraph (b).

Chapters 292 and 305, Laws of 1969, in the paragraph beginning "Class Two" added "and except \* \* \* one and one-quarter (1¼) miles"; in the paragraph beginning "Class Eight" substituted "\$17,500" for "\$15,000" in the introductory paragraph, and in subdivision (4), substituted "whose income from all sources \* \* \* married couple per annum" for "not exceeding one hundred fifty dollars (\$150) per month, if single, or two hundred fifty dollars (\$250) per month if married" and deleted a proviso which read, "Provided such owner and occupier is not gainfully employed to such an extent as would render him or her ineligible for social security benefits, should he or she be otherwise eligible for such benefits, and does not have income from all sources, excluding retirement benefits as mentioned in (4) hereinabove, in excess of one thousand five hundred dollars (\$1,500) per year."

Chapter 35, Laws of 1971, redesignated former subdivision (b) of Class Seven as Class Nine; redesignated former Class Nine as Class Ten; and made minor changes in style.

Chapter 312, Laws of 1971, added "or Class Eight" at the end of subdivision (a) under Class Four; added "and except as such property may be included in Class Eight" at the end of subdivision (b) under Class Four; inserted "trailers affixed to land or mobile home belonging to any



person who qualifies under any one or more of the hereinafter set forth categories" in the preliminary paragraph under Class Eight; inserted "or under a contract for deed" in the preliminary paragraph under Class Eight; deleted "by a widow, with or without minor or dependent children, or" after "actually occupied by" in the preliminary paragraph under Class Eight; inserted "who qualifies under the income limitations of (4)" in each of subdivisions (1), (2) and (3) under Class Eight; increased the income limitations in subdivision (4) under Class Eight from \$3,300 to \$4,000 for a single person and from \$4,500 to \$5,200 for a married couple; and made minor changes in phraseology and style.

Chapter 317, Laws of 1971, inserted the two paragraphs constituting subdivision (d) under Class Five, and made minor changes in style.

Chapter 354, Laws of 1971, added to subdivision (b) under Class Five the exception relating to property within the incorporated limits of a city or town, and made minor changes in style.

#### Repealing Clause

Section 2 of Ch. 292, Laws 1969 repealed all acts and parts of acts in conflict therewith.

**84-302. (2000) Basis for imposition of taxes.** As a basis for the imposition of taxes upon the different classes of property specified in the preceding section, a percentage of the true and full value of the property of each class shall be taken as follows:

Classes 1. to 7. \* \* \* [Same as parent volume.]

Class 8. Fifteen per cent (15%) of its true and full value.

Class 9. One per cent (1%) of its true and full value.

Class 10. Forty per cent (40%) of its true and full value.

**History:** En. Sec. 2, Ch. 51, L. 1919; re-en. Sec. 2000, R. C. M. 1921; amd. Sec. 3, Ch. 239, L. 1961; amd. Sec. 2, Ch. 168, L. 1965; amd. Sec. 2, Ch. 305, L. 1969; amd. Sec. 2, Ch. 35, L. 1971; amd. Sec. 2, Ch. 317, L. 1971.

#### Compiler's Notes

This section was purportedly amended twice in 1971, once by Ch. 35 and once by Ch. 317. However, Ch. 317 made no change in text. The text used above is that from Ch. 35.

#### Amendments

The 1969 amendment substituted "fifteen per cent (15%)" for "twenty per cent (20%)" in Class 8.

Chapter 35, Laws of 1971, inserted the

#### Effective Dates

Section 2 of Ch. 215, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 1, 1967.

Section 3 of Ch. 292, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 10, 1969.

Section 2 of Ch. 312, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 15, 1971.

#### New Industry

Classification of new business established for production of eggs on mass scale as "commercial" rather than "new industry property" under Class Seven was improper since use of agricultural products in industry does not eliminate that industry from benefits of Class Seven. *Cherry Lane Farms of Montana, Inc. v. Carter*, 153 M 240, 456 P 2d 296.

#### References

State ex rel. *Schultz-Lindsay Constr. Co. v. State Board of Equalization*, 145 M 380, 403 P 2d 635.

present Class 9; and redesignated former Class 9 as Class 10.

Chapter 317, Laws of 1971, made no change in this section.

#### Repealing Clause

Section 3 of Ch. 305, Laws 1969 repealed all acts and parts of acts in conflict therewith.

Section 3 of Ch. 35, Laws 1971 repealed all acts and parts of acts in conflict therewith.

#### Effective Date

Section 4 of Ch. 305, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 11, 1969.

Section 4 of Ch. 35, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 18, 1971.

#### References

State ex rel. Schultz-Lindsay Constr. Co. v. State Board of Equalization, 145 M 380, 403 P 2d 635.

### 84-306. (2000.4) Repealed.

#### Repeal

Section 84-306 (Sec. 4, Ch. 64, L. 1929; Sec. 1, Ch. 34, L. 1939), relating to valua-

tion of shares of stock of national banks, was repealed by Sec. 1, Ch. 25, Laws 1971.

**84-307. (2000.5) Assessment of shares of banks—deductions.** The shares of all banking corporations engaged in the banking business in Montana shall be valued and assessed for the purpose of taxation at the full cash value thereof, less the book value of the real estate, moneyed capital and other property of any such bank assessed and taxed as the property of said bank.

**History:** En. Sec. 5, Ch. 64, L. 1929; amd. Sec. 2, Ch. 25, L. 1971.

"Section 84-306, R. C. M. 1947, is repealed."

#### Amendments

The 1971 amendment deleted "state" before "banking corporations"; and inserted "book" before "value of the real estate."

#### Effective Date

Section 3 of Ch. 25, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 16, 1971.

#### Repealing Clause

Section 1 of Ch. 25, Laws 1971 read

## CHAPTER 4—ASSESSMENT OF PROPERTY—POWERS, DUTIES AND LIABILITY OF COUNTY ASSESSOR

### Section

84-406. Time of assessment—motor vehicles—mobile homes—livestock—snowmobiles.

**84-406. (2002) Time of assessment—motor vehicles—mobile homes—livestock—snowmobiles.** (1) The assessor must, between the first Monday of March and the second Monday of July in each year, ascertain the names of all taxable inhabitants, and assess all property in his county subject to taxation, except such as is required to be assessed by the state board of equalization, and must assess such property to the persons by whom it was owned or claimed, or in whose possession or control it was at 12 midnight of the first Monday of March next preceding. He must also ascertain and assess all mobile homes arriving in his county after 12 midnight of the first Monday of March next preceding. The procedure provided by this section shall not apply to:

(a) and (b). \* \* \* [Same as parent volume.]

(c) Property defined in section 53-642 as "special mobile equipment" shall be subject to assessment of personal property taxes either on the date that application is made for a special mobile equipment plate, if that date falls between the first day of January and the first Monday of March, or on the first Monday of March.

(d) Mobile homes held by a distributor or dealer of mobile homes as a part of his stock in trade.

(e) Snowmobiles which are required by subdivision 4 hereof to be assessed as of the first day of January.

(2) The assessor must ascertain and assess all motor vehicles, except mobile homes, in his county subject to taxation as of January 1 in each year, and the same shall be assessed to the persons by whom owned or claimed, or in whose possession or control such vehicle was at 12 midnight of the first day of January in each year. Provided that such tax shall not be assessed against motor vehicles which constitute inventory of motor vehicle dealers as of January 1, but said vehicles, and all other motor vehicles brought into the state subsequent to January 1, as motor vehicle dealer's inventory, shall be assessed to their respective purchasers as of the dates said vehicles are registered by said purchasers, and purchasers means and includes dealers who apply for registration or re-registration of motor vehicles, except as otherwise provided by section 32-3315. Goods, wares and merchandise of motor vehicle dealers, other than new motor vehicles and new mobile homes, shall continue to be assessed at full and true value as of the first Monday of March.

Except that this paragraph shall not apply to an applicant for registration or re-registration of a mobile home, nothing herein contained shall relieve the applicant for registration or re-registration of any other motor vehicle so assessed or subject to assessment of the duty of paying taxes thereon as a condition precedent to registration or re-registration in the event said taxes have not been paid by any prior applicant or owner in all cases where required to be paid.

(3) The assessed value of livestock being fed in feeding pens or enclosures on the first Monday in March may be computed by adding the value of livestock more than six (6) months of age being fed on the last day of each month since the last assessment date and dividing the sum by twelve (12).

(4) The assessor must ascertain and assess all snowmobiles in his county subject to taxation as of January 1 in each year, and the same shall be assessed to the persons by whom owned or claimed, or in whose possession or control such snowmobile was at 12 midnight of the first day of January in each year; provided, however, that snowmobiles which constitute inventory of snowmobile dealers shall be assessed to the dealers as of 12 midnight of the first Monday of March in each year.

**History:** En. Sec. 13, p. 78, L. 1891; re-en. Sec. 3700, Pol. C. 1895; re-en. Sec. 2510, Rev. C. 1907; re-en. Sec. 2002, R. C. M. 1921; amd. Sec. 3, Ch. 158, L. 1933; amd. Sec. 1, Ch. 30, L. 1935; amd. Sec. 9, Ch. 72, L. 1937; amd. Sec. 2, Ch. 256, L. 1955; amd. Sec. 2, Ch. 245, L. 1963; amd. Sec. 1, Ch. 86, L. 1965; amd. Sec. 2, Ch. 232, L. 1967; amd. Sec. 3, Ch. 290, L. 1967; amd. Sec. 3, Ch. 296, L. 1967; amd. Sec. 1, Ch. 40, L. 1969; amd. Sec. 1, Ch. 180, L. 1969; amd. Sec. 6, Ch. 435, L. 1971. Cal. Pol. C. Sec. 3628.

#### **Amendments**

Chapter 232, Laws of 1967, added para-

graph (c) to subsection (1) and made minor changes in style.

Chapter 290, Laws of 1967, added the second and third sentences to the first paragraph of subsection (2), except that Chapter 290 did not contain the words "and new mobile homes" now appearing in said third sentence; it also made minor style changes.

Chapter 296, Laws of 1967, inserted the second sentence in subsection (1); added to subsection (1) the paragraph now designated (d); inserted "except mobile homes" in the first sentence of subsection (2); added the sentence now appearing as the final sentence of the first paragraph



of subsection (2), except that Chapter 296 did not contain the words "new motor vehicles and" now appearing therein; it also inserted "Except that this paragraph shall not apply to an applicant for registration or re-registration of a mobile home" at the beginning of the second paragraph of subsection (2); inserted "other" before "motor vehicle so assessed" in the second paragraph of subsection (2); and made minor style changes.

Chapter 40, Laws of 1969, substituted "12 m." for "12 midnight" where used.

Chapter 180, Laws of 1969, in the second sentence of subsection (2), inserted "and purchasers means and includes dealers who apply for registration or re-registration of motor vehicles" before "except as otherwise provided by section 32-3315."

The 1971 amendment added paragraph (e) to subsection (1); substituted "12 midnight" for "12 m." where used; added

subsection (4); and made minor changes in punctuation and phraseology.

#### Effective Dates

Section 3 of Ch. 232, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 1, 1967.

Section 2 of Ch. 40, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 19, 1969.

Section 2 of Ch. 180, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 28, 1969.

Section 7 of Ch. 435, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 18, 1971.

#### References

Swartz v. Berg, 147 M 178, 411 P 2d 736.

### 84-429.7. Classification and appraisal—duties of county commissioner.

#### Jurisdiction of District Court

District court acted beyond its jurisdiction by enjoining board of equalization from revising, grading and valuation of

nonirrigated farm land pursuant to this section. State ex rel. Lord v. District Court, 154 M 269, 463 P 2d 323.

### 84-429.10. Initiation and completion of classification and appraisal.

#### Application

This section does not operate as statute of limitations on Classification and Ap-

praisal Act. State ex rel. Lord v. District Court, 154 M 269, 463 P 2d 323.

### 84-429.12. Classification and appraisal—general and uniform methods.

#### Basis for Assessment

County board of equalization properly assessed plaintiff's property on basis of "market value" rather than on basis of agricultural land, even though it was being used for agricultural purposes, where property was within commercial area and its value was much greater than that assigned to agricultural property. Mohland v. State Board of Equalization, — M —, 466 P 2d 582.

#### Board Authority

County board of equalization possesses jurisdiction and authority to direct and sanction classification, appraisal and assessment of rural and urban improvements using "market value" as basis and classifying them according to use or uses other than those to which such land is actually devoted. Mohland v. State Board of Equalization, — M —, 466 P. 2d 582.

## CHAPTER 7—EQUALIZATION OF TAXES AND ADMINISTRATION AND SUPERVISION OF ALL TAX LAWS BY STATE BOARD OF EQUALIZATION

#### Section

84-702. Qualification and compensation.

84-708. Powers and duties.

84-713. Determination of state rate of taxation—notice of.

84-724. Destruction of tax records authorized—procedure.

**84-702. (2122.2) Qualification and compensation.** The persons to be appointed as members of the board of equalization shall be such as are

known to possess knowledge of the subject of taxation and skill in matters pertaining thereto. No person so appointed shall hold any other office under the laws of this state nor any other state, nor any office under government of the United States, or of any other state. He shall devote his entire time to the duties of the office and shall not hold any position of trust or profit, nor engage in any occupation or business interfering or inconsistent with his duties, or serve on or under any committee of any political party, or take part either directly or indirectly in any political campaign in the interest of any political party, or organization or candidate for office. Each member shall receive an annual salary in such amount as may be specified by the legislative assembly in the appropriation to the board of equalization. If the legislative assembly does not specify the maximum salary of board members, any increase in the salary of board members must be approved by the board of examiners. Before approving any salary increase, the board of examiners shall review the salaries of comparable positions in Montana state government, other states, and private industry. The salary shall be payable in equal monthly installments. The member elected chairman as provided for in 84-703 shall receive additional compensation of not more than five hundred dollars (\$500) per annum payable in the same manner as the salary. He shall also be paid his actual traveling and other expenses when away from the capitol on official business.

History: En. Sec. 2, Ch. 3, L. 1923; amd. Sec. 1, Ch. 109, L. 1953; amd. Sec. 8, Ch. 225, L. 1963; amd. Sec. 13, Ch. 237, L. 1967.

#### Amendments

The 1967 amendment substituted the fourth, fifth and sixth sentences for a provision setting maximum salary at \$10,000; and made minor style changes.

**84-708. (2122.8) Powers and duties.** It shall be the duty of the board and it shall have power and authority in addition to any authority under the present statutes:

(1) and (2) \* \* \* [Same as parent volume.]

(3) To annually assess the franchise, roadway, roadbeds, rails, and rolling stock, and all other property of all railroads, and the pole lines and rights of way and all other property of all telegraph and telephone lines, electric power and transmission lines, ditches, canals and flumes, and other similar property, constituting a single and continuous property operated in more than one (1) county in the state, and to apportion such assessments to the counties in which such properties are located on a mileage basis, or in the case of telegraph or telephone microwave electronic equipment, which has no physical connection with the total system, but is an integral part of such system, apportion the valuation for assessment of such company in this state among the several counties of this state in such proportion as will fairly represent the valuation for assessment within each such county, utilizing commonly recognized methods of apportioning as shall be just and equitable, provided, however, that lots and parcels of real estate not included in right of way, with the buildings, structures, and improvements thereon, dams and power houses, depots, stations, shops, and other buildings, erected upon right of way, furniture, machinery, and other personal property, shall not be considered as a part of any such

single and continuous property, but shall be considered as separate and distinct therefrom, and shall be assessed by the county assessor of the county wherein they are situate.

(4) and (5) \* \* \* [Same as parent volume.]

(6) To have and exercise general supervision over the administration of the assessment and tax laws of the state, and over assessors, county boards of equalization, boards of county commissioners, and other officers of municipal corporations, having any duties to perform under any of the laws of this state relating to taxation to the end that all assessments of property be made relatively just and equal at true value in substantial compliance with law, and to supervise the administration of all revenue laws of the state and assist in their enforcement, and for that purpose shall call an annual meeting of all county assessors to be held at the state capitol and notice shall be given to each county assessor at least ten (10) days before such meeting, and it shall be the duty of all county assessors to attend and the costs of their attendance shall be paid by the respective counties. Further, the state board of equalization is empowered to organize, and it shall be its duty to schedule and hold area schools within the state for appraisers and assessors as often as is deemed necessary in the judgment of the board and the costs of such appraisers and assessors attending shall be borne by the respective counties. Further, the state board shall determine if there is a need for a taxing, assessing, and appraising school, and such school shall be held, when deemed necessary, on the campus of Montana state university in co-operation with the bureau of business and economic research and the school of business administration, providing that there are university facilities and authorities available. The board shall notify all assessors and appraisers and county commissioners at least six (6) months before such school is scheduled and it shall be the duty of all assessors and appraisers to attend and the cost of their attendance shall be borne by the respective counties. Further, one (1) or more members of the board shall visit at least one fourth ( $\frac{1}{4}$ ) of the counties of the state annually, and shall visit every county in the state at least once in four (4) years to examine the work and methods of county assessors, boards of county commissioners, county boards of equalization, and county treasurers in their assessment and equalization of taxes on all kinds of property within the county.

(7) to (10) \* \* \* [Same as parent volume.]

(11) In its discretion, to inspect and examine, or cause an inspection and examination of the records of the officers of any municipality, whenever such officer shall have failed, neglected or refused to return properly the information required by this section within the time set by the board. Upon completion of such inspection and examination the board shall transmit to the clerk, or other proper official of the municipality, a statement of the expenses incurred by the board to secure the necessary information. A duplicate of such statement shall be filed in the office of the state board of examiners and when approved and allowed shall be paid the same as other expenses of the board. Within sixty (60) days after the receipt by the municipality of the above statement, the same shall be audited, as



other claims of the municipal corporation are audited and shall be paid into the state treasury and if the same is not so paid the attorney general shall institute an action, in the proper court, against the municipality to recover the same.

The officers responsible for the furnishing of the information collected pursuant to this section, shall be jointly and severally liable for any loss the municipality may suffer, through their delinquency; and no payment shall be made to them for salary, or on any other account, until the cost of such inspection and examination as provided above shall have been paid into the treasury, or to the proper officers of such municipality. They shall also be subject to such other fines and penalties as prescribed by law.

(12) to (18) \* \* \* [Same as parent volume.]

**History:** En. Sec. 8, Ch. 3, L. 1923; amd. Sec. 1, Ch. 137, L. 1957; amd. Sec. 1, Ch. 227, L. 1963; amd. Sec. 1, Ch. 211, L. 1971.

#### Amendments

The 1971 amendment inserted immediately before the proviso in subdivision (3) the clause relating to telegraph and telephone microwave electronic equipment; and made minor changes in style.

#### Effective Date

Section 2 of Ch. 211, Laws 1971 provided the act should be in effect from

and after its passage and approval. Approved March 4, 1971.

#### County Board Authority

County board of equalization possesses jurisdiction and authority to direct and sanction classification, appraisal and assessment of rural and urban improvements, using "market value" as basis and classifying them according to use or uses other than those to which such land is actually devoted. *Mohland v. State Board of Equalization*, — M —, 466 P 2d 582.

### 84-710. (2122.10) Notice of intention to change assessment.

#### Judicial Power

District court acted beyond its jurisdiction by enjoining board of equalization from holding hearing, pursuant to this

section, concerning revision of grading and valuation of nonirrigated farm land. *State ex rel. Lord v. District Court*, 154 M 269, 463 P 2d 323.

### 84-713. (2122.13) Determination of state rate of taxation—notice of.

Between the first and third Mondays of August of each year, the governor must determine the rate of state tax to be levied and collected upon the assessed valuation of the property in the state, which, after allowing twelve per cent (12%) for delinquencies in the collection of taxes, must be sufficient to raise the specific amount of the revenue required by the legislative assembly for state purposes. The state board of equalization must immediately thereafter transmit to the county clerk of each county a statement of such rate, and upon its receipt the county clerk must, in writing, notify the state board of equalization thereof.

**History:** En. Sec. 13, Ch. 3, L. 1923; amd. Sec. 1, Ch. 19, L. 1969.

#### Amendments

The 1969 amendment substituted "governor must determine" for "board must

determine" before "the rate of state tax" in the first sentence; and substituted "The state board of equalization" for "The board" at the beginning of the last sentence.

**84-724. Destruction of tax records authorized—procedure.** Notwithstanding the provisions of any other chapter of this code, the state board

of equalization is authorized to destroy tax records more than three (3) years old, as shall be determined to be of no further value.

Authorization for destruction of tax records shall be by unanimous vote of the members of the state board of equalization entered upon an authenticated list of records authorized to be destroyed. A copy of the authorization and authenticated list shall be entered in the minutes of the board by its secretary.

**History:** En. Sec. 1, Ch. 187, L. 1963;  
amd. Sec. 1, Ch. 9, L. 1969.

**Effective Date**

Section 2 of Ch. 9, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved January 29, 1969.

**Amendments**

The 1969 amendment substituted "three (3) years old" for "five (5) years old" after "tax record more than" in the first paragraph.

CHAPTER 10—LICENSE TAXES—CARBON BLACK PRODUCERS

**84-1002. (2380.2) Amount of tax.**

**Cross-References**

Multistate tax compact, sec. 84-6701.

CHAPTER 11—LICENSE TAXES—CEMENT DEALERS

**84-1102. (2368) License tax on sales of cement, etc.**

**Cross-References**

Multistate tax compact, sec. 84-6701.

CHAPTER 12—LICENSE TAXES—CEMENT AND GYPSUM PRODUCERS

**84-1202. (2357) License tax on producers and importers of gypsum and cement.**

**Cross-References**

Multistate tax compact, sec. 84-6701.

CHAPTER 13—LICENSE TAXES—COAL MINES

**Section**

84-1302. Strip coal mines license tax—amount—exemptions—testing of samples.

84-1303. Payment of annual license tax.

84-1304. Strip coal mine operators to file statements.

**84-1302. (2317) Strip coal mines license tax—amount—exemptions—testing of samples.** (1) Every person engaged in or carrying on the business of strip coal mining, or engaged in the business of working or operating any strip coal mine or strip coal mining property, in the state of Montana, from which marketable or merchantable coal of any kind is extracted or produced by means of strip mining, whether such person shall carry on such business or engage in such work or operations as owner, lessee, trustee, possessor, receiver, or in any other capacity, must for the year 1921, and each year thereafter, when engaged in or carrying

on such business, work or operations, pay to the state treasurer, for the exclusive use and benefit of the state of Montana, a license tax for engaging in and carrying on such business, work and operations, in the amounts listed in subsection (2) and subject to the exemption provided in subsection (3) on marketable or merchantable coal extracted or produced by means of strip mining by such person in the state of Montana and shipped by such person during such year, or used by such person for any purpose except in connection with the operating of the strip coal mine or mining property from which the same was extracted or produced, by means of strip mining or delivered by such person to any other person for shipment, sale or use by such other person; provided, however, that nothing in this act shall be construed as requiring laborers or employees, hired or employed, by any person to mine coal, or to work in or about, or in connection with any strip coal mine to pay such license taxes, nor shall any work required to be done in prospecting for, or in developing, or in opening up any strip coal mine or strip coal mining property, be deemed to be the carrying on of a strip coal mining business, or the engaging in the business of working or operating of a strip coal mine; provided, further, that if during any such work of developing or opening up any strip coal mine or strip coal mining property, any marketable or merchantable coal shall be extracted or produced by means of strip mining and sold, then the same shall be deemed the carrying on of a strip coal mining business and the engaging in the business of working and operating a strip coal mine.

(2) The license tax to be paid under subsection (1) of this act shall be computed as follows:

For each ton of coal having a British thermal unit (hereafter, BTU) rating per pound of six thousand (6,000) or less, four cents (\$.04) per ton.

For each ton of coal having a BTU rating of six thousand one (6,001) to seven thousand five hundred (7,500), six cents (\$.06) per ton.

For each ton of coal having a BTU rating of seven thousand five hundred one (7,501) to nine thousand (9,000), eight cents (\$.08) per ton.

For each ton of coal having a BTU rating of nine thousand one (9,001) and up, ten cents (\$.10) per ton.

(3) The person paying such license tax shall be entitled to exempt annually from said license tax a total of five thousand (5,000) tons of coal, and such exemption may be applied all to one British thermal unit rating, or may be spread among the several ratings, but the total exemption may not exceed, in any case, five thousand (5,000) tons in any one year.

(4) The Montana state bureau of mines and geology (hereafter bureau) is designated as the testing agency for purposes of this act and is granted the right to promulgate rules and regulations to provide testing data required by this act. The rules and regulations promulgated under this act shall be structured to mutually protect the interest of the persons subject to the provisions of this act and the state of Montana.

(5) Every person subject to the provisions of this act shall on or before the first day of August of each calendar year submit to the bureau a



sample of mine run "as is" coal from their coal production area. Additional sampling shall be required of the persons subject to this act at the request of the bureau.

(6) The bureau shall provide a form showing the results of the testing provided for under this act to the persons subject to this tax and the board of equalization prior to the first of September of each calendar year.

**History:** En. Sec. 2, Ch. 155, L. 1921; re-en. Sec. 2317, R. C. M. 1921; amd. Sec. 1, Ch. 200, L. 1939; amd. Sec. 1, Ch. 244, L. 1967; amd. Sec. 1, Ch. 355, L. 1971.

The 1971 amendment designated the former section as subsection (1); substituted "the amounts listed in subsection (2) and subject to the exemption provided in subsection (3) on" for "an amount equal to five cents per ton for each and every ton in excess of fifty thousand tons of" near the middle of subsection (1); and added subsections (2), (3), (4), (5), and (6).

#### Amendments

The 1967 amendment inserted "strip" before "coal" in ten places; inserted "strip coal" before "mine" or "mining" in four places; deleted "mined" before "extracted" in four places; inserted "by means of strip mining" after "produced" in four places; and deleted "or coal property or business" before "to pay such license taxes."

#### Cross-References

Multistate tax compact, sec. 84-6701.

**84-1303. (2318) Payment of annual license tax.** Such annual license tax shall be paid in quarterly installments for the quarters ending, respectively, March 31st, June 30th, September 30th, and December 31st in each year, beginning with the quarter ending March 31, 1921, and the amount of the license tax due for each such quarter shall be paid to the state treasurer within thirty (30) days after the end of each such quarter provided that one-half ( $\frac{1}{2}$ ) of the amounts reported to the state treasurer by the bureau of mines and geology as being the reasonable value of on site reclamation work performed by a licensee on lands on which strip mining has been conducted shall be credited to such licensee on the first quarterly payment of the license tax due after such report is received and on such subsequent quarterly payments until the licensee has received credit for the full amount thus reported; and further providing that in no instance shall the tax credit exceed one cent (\$.01) per ton on the coal removed from the reclamation area.

**History:** En. Sec. 3, Ch. 155, L. 1921; re-en. Sec. 2318, R. C. M. 1921; amd. Sec. 5, Ch. 245, L. 1967; amd. Sec. 2, Ch. 355, L. 1971.

The 1971 amendment inserted "on site" before "reclamation work performed" in the first proviso; added the second proviso; and made a minor change in style.

#### Amendments

The 1967 amendment added the first proviso.

**84-1304. (2319) Strip coal mine operators to file statements.** Each and every person engaged in or carrying on the business of strip coal mining, or engaged in the business of working or operating any strip coal mine or strip coal mining property in the state of Montana, from which coal of any kind is extracted or produced by means of strip mining at the date when this act becomes effective, must, not later than the thirtieth day of April, 1921, and every person who shall, after the date this act becomes effective, engage in the business of strip coal mining or engage

in working or operating any strip coal mine or strip coal mining property in the state of Montana, from which coal of any kind is extracted or produced by means of strip mining must, immediately upon engaging in such business, work or operations, file with the state board of equalization, a certificate and statement, on forms prescribed by such state board of equalization, which shall contain the name under which such person is engaging in and carrying on such business, work and operations, within this state, giving the place or places of business or location of the strip coal mine or strip coal mining property; the name and address of the managing agent in this state, if an association, joint-stock company, or corporation, or if a firm or partnership, the names and addresses of the persons composing the same; if an association or corporation, under the laws of what state organized, its principal place of business and the names and addresses of its principal officers; and such other information as the board may deem necessary.

**History:** En. Sec. 4, Ch. 155, L. 1921; re-en. Sec. 2319, R. C. M. 1921; amd. Sec. 2, Ch. 244, L. 1967.

#### **Amendments**

The 1967 amendment inserted "strip

coal" before "mine" or "mining" in seven places; inserted "strip" before "coal" in two places; and substituted "extracted or produced by means of strip mining" for "mined" after "any kind is" in two places.

### **CHAPTER 14—LICENSE TAXES—COAL RETAILERS**

#### **84-1402. (2328) License to retail coal—fees.**

##### **Cross-References**

Multistate tax compact, sec. 84-6701.

### **CHAPTER 15—LICENSE TAXES—CORPORATION LICENSE TAX**

#### **Section**

- 84-1501. Corporation license tax—organizations exempt therefrom—alternative tax based on gross sales.
- 84-1501.5. Minimum fee of corporations qualifying under section 84-1501.2 unaffected.
- 84-1501.6. State and national banks subject to tax.
- 84-1501.7. Effective dates.
- 84-1502. Deductions allowed in computing income.
- 84-1503. Segregation of income within and without state.
- 84-1505. Assessment and collection of tax.
- 84-1505.1. Release of tax liens.
- 84-1505.2. Immediate payment of tax or deficiency due may be required if delay would jeopardize collection.
- 84-1508.2. Periods of limitation—limitations for notification of additional tax extended if taxpayer fails to report change in federal tax—waiver.
- 84-1509. Consolidated returns—computation and procedure on.
- 84-1515. Reviver of corporation after suspension or forfeiture.
- 84-1517. Failure to make return—estimate and investigation of net income—copy of federal return to be furnished on request—report of change in federal tax—copy of amended federal returns.

**84-1501. (2296) Corporation license tax—organizations exempt therefrom—alternative tax based on gross sales.** The term corporation includes associations, joint-stock companies, common-law trusts and business trusts which do business in an organized capacity whether created under and pursuant to state laws, agreements, declarations of trust. Every corporation, except as hereinafter provided and except as provided in section 40-2821 (5), R. C. M. 1947, organized and existing under the laws of the

state of Montana and engaged in business therein, shall annually pay to the state treasurer, as a license fee for carrying on business in said state of Montana, such percentage or percentages of total net income received by such corporation in the preceding fiscal year from all sources within the state of Montana as hereinafter set forth; and every corporation, except as hereinafter provided, and except as provided in section 40-2821 (5), R. C. M. 1947, organized and existing under the laws of any other state or country, or the United States, and engaged in business in the state of Montana, shall annually pay for the exclusive use and benefit of the state of Montana a license fee for carrying on its business in the state of Montana of such percentage or percentages of total net income received by such corporation in the preceding fiscal year from all sources within the state of Montana as hereinafter set forth.

The percentage of net income to be paid under this section shall be six and one-quarter per cent ( $6\frac{1}{4}\%$ ) of all net income for the taxable period. The rate set forth in this act shall be effective for all taxable years ending on or after February 28, 1971. Every corporation subject to taxation under this act shall, in any event, pay a minimum tax of not less than fifty dollars (\$50).

Pursuant to the provisions of article III, section 2, of the Multistate Tax Compact (Title 84, chapter 67, R. C. M. 1947) every corporation deriving income from sources both within and without the state of Montana and required to file a return and whose only activity in Montana consists of making sales and which does not own or rent real estate or tangible personal property within Montana and whose annual gross volume of sales made in Montana during the taxable year does not exceed one hundred thousand dollars (\$100,000), may elect to pay a tax of one-half of one percent of gross sales made in Montana during the taxable year. Such tax shall be in lieu of the tax otherwise imposed under this section. The gross volume of sales made in Montana during the taxable year shall be determined according to the provisions of article IV, sections 16 and 17, of the Multistate Tax Compact.

There shall not be taxed under this title any income received by any—  
(a) to (k). \* \* \* [Same as parent volume.]

**History:** En. Sec. 1, Ch. 79, L. 1917; Subd. 16 amd. Sec. 1, Ch. 64, L. 1921; re-en. Sec. 2296, R. C. M. 1921; amd. Sec. 1, Ch. 166, L. 1933; amd. Sec. 1, Ch. 29, L. 1937; amd. Sec. 1, Ch. 92, L. 1937; amd. Sec. 1, Ch. 232, L. 1957; amd. Sec. 1, Ch. 264, L. 1959; amd. Sec. 1, Ch. 155, L. 1961; amd. Sec. 1, Ch. 269, L. 1965; amd. Sec. 1, Ch. 4, Ex. L. 1967; amd. Sec. 1, Ch. 11, Ex. L. 1969; amd. Sec. 1, Ch. 16, L. 1971; amd. Sec. 1, Ch. 333, L. 1971; amd. Sec. 1, Ch. 5, Ex. L. 1971.

#### Compiler's Notes

This section was amended three times in 1971, once by Ch. 16, once by Ch. 333 and once by Ex. Ch. 5. Chapter 5 of the Extraordinary Session referred to and amended the section as amended by Ch. 333; but otherwise none of the amenda-

tory acts referred to or incorporated the changes made by the other. Since the amendments made in the regular session do not appear to conflict, the compiler has made a composite section embodying the changes made by both regular session amendments and including the changes made in Ch. 333 by Ex. Ch. 5.

#### Amendments

The 1967 amendment, in the first paragraph, inserted "and except as provided in section 40-2821 (5), R. C. M. 1947" the first place it appears in the second sentence; and, in the second paragraph, increased the percentage of net income to be paid under this section from  $5\frac{1}{4}\%$  to  $5\frac{1}{2}\%$ , and inserted the second sentence.

The 1969 amendment, in the first sentence of the second paragraph, raised the



percentage of net income from "five and one-half per cent (5½%)" to "six and one-quarter per cent (6¼%)" in the second sentence deleted "all" before "taxable years" and substituted "1969" for "1967"; inserted a third sentence reading: "For taxable years ending on or after February 28, 1971, the percentage of net income to be paid under this act shall be five and one-half per cent (5½%) of all net income for the taxable period."; and raised the minimum tax stated in the fourth sentence from "\$10" to "\$50."

Chapter 16, Laws of 1971, inserted "and except as provided in section 40-2821(5), R. C. M. 1947" the second place it appears in the second sentence of the first paragraph; and inserted the present third paragraph providing for an alternative corporation license tax.

Chapter 333, Laws of 1971, deleted "ending on or" after "taxable years" in the second sentence of the second paragraph; and deleted the former third sentence inserted in the second paragraph by the 1969 amendment.

Extraordinary Session Chapter 5, Laws of 1971, substituted "all taxable years ending on or after" for "taxable years after" in the second sentence of the second paragraph.

#### Effective Dates

Section 2 of Ch. 318, Laws 1967 read: "The rate set forth in this act shall be effective as to all taxable years ending on or after February 28, 1967, whether on the calendar or fiscal year basis."

Section 3 of Ch. 318, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 20, 1967.

Section 2 of Ch. 16, Laws 1971 read "This act shall be effective for taxable years beginning on and after January 1, 1971."

Section 2 of Ch. 333, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 15, 1971.

Section 2 of Ch. 5, Ex. Laws 1971, provides: "The rate set forth in this act shall be effective as to all taxable years ending on or after February 28, 1971, whether on the calendar or fiscal year basis."

Section 3 of Ch. 5, Ex. Laws 1971 provided the act should be in effect from and after its passage and approval. Approved April 6, 1971.

#### Cross-References

Corporation income tax, sec. 84-6901 et seq.

Multistate tax compact, sec. 84-6701.

#### Sale of Assets in Liquidation

Directors and trustees in liquidation of a liquidated corporation were entitled to a refund of that portion of the corporate license tax paid upon the gain realized by the corporation in the sale of its assets in liquidation. *Barth v. Montana State Board of Equalization*, 148 M 259, 419 P 2d 484, 485.

### 84-1501.1. Definitions.

#### References

*Barth v. Montana State Board of Equalization*, 148 M 259, 419 P 2d 484, 485.

### 84-1501.2. Election by small business corporation.

#### References

*Barth v. Montana State Board of Equalization*, 148 M 259, 419 P 2d 484, 485.

### 84-1501.3. Small business option unavailable on dissolution, etc.

#### Application

This section applies only to shifting of the tax burden under sections 84-1501.1

and 84-1501.2. *Barth v. Montana State Board of Equalization*, 148 M 259, 419 P 2d 484, 485.

### 84-1501.4. Repealed.

#### Repeal

Section 84-1501.4 (Sec. 1, Ch. 316, L. 1967), exempting state banks from the

corporation license tax until national banks are taxable, was repealed by Sec. 2, Ch. 23, Laws 1971.

**84-1501.5. Minimum fee of corporations qualifying under section 84-1501.2 unaffected.** Notwithstanding the provisions of this act, corpora-

tions electing and qualifying under section 84-1501.2 shall pay a minimum fee of ten dollars (\$10).

**History:** En. Sec. 2, Ch. 11, Ex. L. 1969.

**Effective Date**

Section 3 of Ch. 11, Ex. Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 19, 1969.

**84-1501.6. State and national banks subject to tax.** Effective with taxable years beginning on and after January 1, 1971, every bank organized under the laws of the state of Montana or of any other state and every national bank organized under the laws of the United States are subject to the Montana corporation license tax provided for under Title 84, chapter 15, R. C. M. 1947.

**History:** En. 84-1501.6 by Sec. 1, Ch. 23, L. 1971.

R. C. M. 1947; and providing effective dates.

**Title of Act**

An act subjecting state and national banks to the Montana corporation license tax; and repealing section 84-1501.4,

**Repealing Clause**

Section 2 of Ch. 23, Laws 1971 read "Section 84-1501.4, R. C. M. 1947, is repealed."

**84-1501.7. Effective dates.** For the taxable year beginning on and after January 1, 1971, section 1 [84-1501.6] of this act is effective in accordance with Public Law 91-156, section 1 (12 U.S.C. 548 (5)). For taxable years beginning on and after January 1, 1972, section 1 [84-1501.6] of this act is effective in accordance with Public Law 91-156, section 2 (12 U.S.C. 548).

**History:** En. Sec. 3, Ch. 23, L. 1971.

**84-1502. (2297) Deductions allowed in computing income.** In computing the net income the following deductions shall be allowed from the gross income received by such corporation within the year from all sources: 1. \* \* \* [Same as parent volume.]

2. (A) All losses actually sustained and charged off within the year and not compensated by insurance or otherwise, including a reasonable allowance for the wear and tear of property arising out of its use or employment in the business or trade. No deduction shall be allowed for any amount paid out for any buildings, permanent improvements or betterments made to increase the value of any property or estate and no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made.

(B) (a) There shall be allowed as a deduction for the taxable period a net operating loss deduction determined according to the provisions of this subsection. The net operating loss deduction is the aggregate of net operating loss carryovers to such taxable period plus the net operating loss carrybacks to such taxable period. The term "net operating loss" means the excess of the deductions allowed by this section, 84-1502, over the gross income, with the modifications specified in paragraph (b) of this subsection. If for any taxable period beginning after December 31, 1970, a net operating loss is sustained, such loss shall be a net operating loss

carryback to each of the three (3) taxable periods preceding the taxable period of such loss and shall be a net operating loss carryover to each of the five (5) taxable periods following the taxable period of such loss. The portion of such loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of such loss over the sum of the net income for each of the prior taxable periods to which such loss was carried. For purposes of the preceding sentence, the net income for such prior taxable period shall be computed with the modifications specified in paragraph (b) (ii) of this subsection and by determining the amount of the net operating loss deduction without regard to the net operating loss for the loss period or any taxable period thereafter, and the net income so computed shall not be considered to be less than zero.

(b) The modifications referred to in paragraph (a) of this subsection shall be as follows:

(i) No net operating loss deduction shall be allowed.

(ii) The deduction for depletion shall not exceed the amount which would be allowable if computed under the cost method.

(c) A net operating loss deduction shall be allowed only with regard to losses attributable to the business carried on within the state of Montana.

(d) In the case of a merger of corporations, the surviving corporation shall not be allowed a net operating loss deduction for net operating losses sustained by the merged corporations prior to the date of merger.

In the case of consolidation of corporations, the new corporate entity shall not be allowed a deduction for net operating losses sustained by the consolidation.

(e) Notwithstanding the provisions of section 84-1508.1 (c), R. C. M., 1947, interest shall not be paid with respect to a refund of tax resulting from a net operating loss carryback or carryover.

(f) The net operating loss deduction shall not be allowed with respect to taxable periods which ended on or before December 31, 1970, but shall be allowed only with respect to taxable periods beginning on or after January 1, 1971.

3. and 4. \* \* \* [Same as parent volume.]

5. Interest income from obligations of the state of Montana, or any political subdivision or municipality of the state of Montana.

6. Taxes paid within the year except the following: (a) Taxes imposed by this act.

(b) Taxes assessed against local benefits of a kind tending to increase the value of the property assessed.

(c) Taxes on or according to or measured by net income or profits imposed by authority of the government of the United States.

Taxes deductible under this act shall be construed to include taxes imposed by any county, school district or municipality of this state.

History: En. Sec. 2, Ch. 79, L. 1917; Sec. 1, Ch. 133, L. 1947; amd. Sec. 1, Ch. amd. Sec. 1, Ch. 69, L. 1919; amd. Sec. 1, 263, L. 1959; amd. Sec. 1, Ch. 235, L. 1971; Ch. 258, L. 1921; re-en. Sec. 2297, R. C. M. amd. Sec. 1, Ch. 358, L. 1971. 1921; amd. Sec. 2, Ch. 166, L. 1933; amd.



### Compiler's Notes

This section was amended twice in 1971, once by Ch. 235 and once by Ch. 358. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

### Amendments

Chapter 235, Laws of 1971, inserted the present subdivision 5; and renumbered former subdivisions 5 and 6 as subdivisions 6 and 7.

Chapter 358, Laws of 1971, designated the former subdivision 2 as subdivision 2 (A); added subdivision 2 (B); substi-

tuted "or" for "of" after "net income" in subdivision 5(c); and deleted subdivision 7 relating to insurance companies.

### Effective Date

Section 2 of Ch. 235, Laws 1971 read "The provisions of this act shall apply to all taxable years commencing on or after December 31, 1970, whether on a calendar or fiscal year basis."

Section 3 of Ch. 235, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 9, 1971.

Section 2 of Ch. 358, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 15, 1971.

## 84-1503. (2297.1) Segregation of income within and without state.

If the income of any corporation from sources within the state cannot be properly segregated from income without the state, then, in that event, the amount of the net income returned shall be that proportion of the taxpayer's total net income which the taxpayer's gross business done in the state of Montana bears to the total gross business of the taxpayer, and apportionment shall be made under the rules and regulations prescribed by the state board of equalization, giving consideration to sales, property and payroll and such other factors as may be deemed applicable; provided, however, that the state board of equalization shall, upon the presentation of satisfactory evidence, determine that the income from sources within the state of Montana may be properly segregated from income from sources without the state of Montana and shall allow separate accounting. The board shall publish not less than once every three (3) years, all rules and regulations and all changes in rules and regulations as they occur pertaining to this section. All decisions by the board under this section shall be subject to judicial review in an action prosecuted by the corporation in the district court of Lewis and Clark county. The taxpayer may not change from apportionment by formula to separate accounting or vice versa without first obtaining permission from the board.

**History:** En. Sec. 3, Ch. 166, L. 1933; amd. Sec. 1, Ch. 219, L. 1957; amd. Sec. 1, Ch. 143, L. 1969.

### Amendments

The 1969 amendment substituted "not less than once every three (3) years" for "not less than once a year" after "board

shall publish" and inserted "and all changes \* \* \* as they occur" in the second sentence; substituted "may not change \* \* \* or vice versa" for "cannot change from one method of accounting to another method of accounting" in the last sentence.

## 84-1504. (2299) Computation of license tax, etc.

### Sale of Assets in Liquidation

Directors and trustees in liquidation of a liquidated corporation were entitled to a refund of that portion of the corporate licensed tax paid upon the gain realized

by the corporation in the sale of its assets in liquidation. *Barth v. Montana State Board of Equalization*, 148 M 259, 419 P 2d 484, 485.

**84-1505. (2300) Assessment and collection of tax.** (1) Assessment and payment of tax, penalty and interest. All taxpayers shall compute the

amount of tax payable under this act and shall remit such amount to the state board of equalization on or before the fifteenth day of the fifth month following the close of the taxable period. If the tax is not paid on or before the due date, there shall be assessed a penalty of ten per cent (10%) of the amount of the tax, unless it is shown that the failure was due to reasonable cause and not due to neglect. If any tax due under this chapter is not paid when due, by reason of extension granted, or otherwise, interest shall be added thereto at the rate of nine per cent (9%) per annum from the due date until paid.

(2) and (3). \* \* \* [Same as parent volume.]

**History:** En. Sec. 5, Ch. 79, L. 1917; re-en. Sec. 2300, R. C. M. 1921; amd. Sec. 2, Ch. 146, L. 1923; amd. Sec. 1, Ch. 209, L. 1945; amd. Sec. 1, Ch. 102, L. 1961; amd. Sec. 4, Ch. 186, L. 1963; amd. Sec. 1, Ch. 324, L. 1969.

rate on unpaid taxes from "six per cent (6%)" to "nine per cent (9%)" per annum.

#### Effective Date

Section 2 of Ch. 324, Laws 1969 read "This act is effective as to taxable years ending on and after December 31, 1968."

#### Amendments

The 1969 amendment raised the interest

**84-1505.1. Release of tax liens.** (1) The state board of equalization shall issue a certificate of release of any lien imposed with respect to any tax due under Title 84, chapter 15, R.C.M. 1947, when it finds that the liability for the amount of tax assessed, together with all penalties and interest in respect thereof has been fully satisfied. The state board of equalization may issue a certificate of release if it determines that the lien is unenforceable.

(2) The state board of equalization may issue a certificate of discharge of any part of the property subject to any lien imposed with respect to any tax due under Title 84, chapter 15, R.C.M. 1947, if:

(a) It finds that the fair market value of that part of the property remaining subject to the lien is at least double the value of the unsatisfied liability secured by such lien and the amount of all other liens upon the property which may have priority to such lien;

(b) There is paid to the state treasurer in part satisfaction of the liability secured by the lien, an amount which shall not be less than the value, as determined by the state board of equalization, of the interest of the state of Montana in the part to be discharged; or

(c) The state board of equalization determines at any time that the interest of the state of Montana in the part to be so discharged has no value.

**History:** En. Sec. 1, Ch. 53, L. 1967.

discharge of property from force of lien imposed with respect to corporation license tax liability.

#### Title of Act

An act to permit release of lien and

**84-1505.2. Immediate payment of tax or deficiency due may be required if delay would jeopardize collection.** If the state board of equalization finds that the assessment or collection of the tax or a deficiency in tax due under any corporation license tax statute of Montana for any taxable period will be jeopardized in whole or in part by delay, it may mail notice of its findings to the taxpayer together with a demand for immediate

payment of the tax or deficiency declared to be in jeopardy, including penalty and accrued interest. In the case of a tax for a current period, the board may declare the taxable period of the taxpayer immediately terminated, and shall mail or issue notice of its findings to the taxpayer together with a demand for immediate payment of the tax based on the period declared terminated. A jeopardy assessment is immediately due and payable, and proceedings for collection may be commenced at once.

**History:** En. Sec. 1, Ch. 246, L. 1969.

**Title of Act**

An act which empowers the state board of equalization to require immediate pay-

ment of a tax or deficiency due under any corporation license tax statute of Montana if the board finds that the collection of the tax or deficiency will be jeopardized in whole or in part by delay.

**84-1508.2. Periods of limitation—limitations for notification of additional tax extended if taxpayer fails to report change in federal tax—waiver.** (1) Except as otherwise provided in this section and in section 84-1513, R. C. M. 1947, no deficiency shall be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within five (5) years from the date the return was filed. For the purposes of this section a return filed before the last day prescribed for filing shall be considered as filed on such last day. Where before the expiration of the period prescribed for assessment of the tax, the taxpayer consents in writing to an assessment after the time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The limitations prescribed for giving notice of a proposed assessment of additional tax shall not apply when a taxpayer has failed to file a report of changes in federal taxable income or an amended return as required by section 84-1517, R. C. M. 1947, until five (5) years after the federal changes become final or the amended federal return was filed, whichever the case may be.

(2). \* \* \* [Same as parent volume.]

**History:** En. Sec. 2, Ch. 186, L. 1963; amd. Sec. 1, Ch. 142, L. 1969.

**Amendments**

The 1969 amendment, in the first sen-

tence of subsection (1), substituted "in this section and \* \* \* R. C. M. 1947" for "in section 84-1513"; substituted "such last day" for "that day" at the end of the second sentence and added the last sentence.

**84-1509. Consolidated returns—computation and procedure on.** (1) Corporations which are affiliated may not file a consolidated return unless at least eighty per cent (80%) of all classes of stock of each corporation involved is owned directly or indirectly by one (1) or more members of the affiliated group.

(2) Corporations may not file a consolidated return unless the operation of the affiliated group constitutes a unitary business and permission to file a consolidated return is given by the state board of equalization. For purposes of this section, a "unitary business operation" means one in which the business operations conducted by the corporations in the affiliated group are interrelated or interdependent to the extent that the net income of one corporation cannot reasonably be determined without reference to the operations conducted by the other corporations.



(3) If the conditions of subsections (1) and (2) of this section are met, the state board of equalization may require corporations to file a consolidated return when the board considers a consolidated return necessary.

(4) Any corporation liable to report under this act and owning, or controlling, either directly or indirectly, at least eighty per cent (80%) of all classes of stock of each corporation involved, may be required to make a consolidated report showing the combined net income[,] such assets of the corporation as are required for the purposes of this act, and such other information as the state board of equalization may require, but excluding intercorporate stockholdings and intercorporate accounts. Any corporation liable to report under this act and owned or controlled, either directly or indirectly, by another corporation may be required to make a report consolidated with the owning company, showing the combined net income, such assets of the corporation as are required for the purposes of this act, and such other information as the state board of equalization may require, but excluding intercorporate stockholdings and intercorporate accounts. In case it shall appear to the state board of equalization that any arrangement exists in such a manner as to improperly reflect the business done, the segregable assets or the entire net income earned from business done in this state, the state board of equalization is authorized and empowered, in such manner as it may determine, to equitably adjust the tax.

**History:** En. Sec. 5, Ch. 166, L. 1933;  
amd. Sec. 1, Ch. 243, L. 1969.

#### Amendments

The 1969 amendment substituted subsections (1) to (3) for former subsection (a) which provided that affiliated corporations

make a consolidated return if authorized and/or required by the state board of equalization; redesignated former subsection (b) as subsection (4) and inserted "at least eighty per cent \* \* \* of each corporation involved" after "controlling, either directly or indirectly" in the first sentence.

### 84-1511. (2303.3) Return and payment of tax by corporations, etc.

#### Sale of Assets in Liquidation

Directors and trustees in liquidation of a liquidated corporation were entitled to a refund of that portion of the corporate license tax paid upon the gain realized

by the corporation in the sale of its assets in liquidation. *Barth v. Montana State Board of Equalization*, 148 M 259, 419 P 2d 484, 485.

### 84-1515. (2303.7) Reviver of corporation after suspension or forfeiture.

Any corporation which has suffered the suspension or forfeiture referred to in the preceding section may be relieved therefrom upon making application therefor in writing supported by a certificate from the state board of equalization showing that the required return has been made and filed and/or that the tax and interest and penalties have been paid, for which the suspension or forfeiture occurred. Application for reviver may be made by any stockholder or creditor of the corporation or by a majority of the surviving trustees or directors, and the same shall be filed with the secretary of state, for which he shall receive a filing and recording fee of five dollars (\$5). In case the application is made more than one (1) year from the date the suspension or forfeiture occurred the applicant shall pay twice the amount of the tax and penalties due the state for the taxable year with respect to which the suspension or forfeiture occurred, and upon such payment the secretary of state shall issue a certificate of reviver

for which he shall collect a fee of five dollars (\$5) and thereupon the applicant shall be revived. The reviver shall be without prejudice to any action, defense or right which has accrued by reason of the original suspension or forfeiture. The certificate of reviver shall be prima facie evidence of the reviver. Any certificate of reviver provided for in this section may be recorded in the office of the county recorder in any county of this state.

**History:** En. Sec. 11, Ch. 166, L. 1933; amd. Sec. 1, Ch. 49, L. 1947; amd. Sec. 15, Ch. 117, L. 1961; amd. Sec. 1, Ch. 52, L. 1967.

the act should be in effect from and after its passage and approval. Approved February 18, 1967.

#### Amendments

The 1967 amendment substituted "more than one (1) year from the date" for "in any taxable year other than the taxable year in which" after "application is made" and substituted "with respect to which" for "in which" after "for the taxable year," both in the third sentence.

#### Effective Date

Section 2 of Ch. 52, Laws 1967 provided

#### Contract Made During Suspension

Statute providing that reviver shall be without prejudice to any action, defense or right which has accrued by reason of original suspension or forfeiture relates to right of corporation to do business rather than to nonenforceability of contract made by corporation while suspended. *Manufacturers Acceptance Corp. v. Krsul*, 151 M 28, 438 P 2d 667.

**84-1517. (2303.9) Failure to make return—estimate and investigation of net income—copy of federal return to be furnished on request—report of change in federal tax—copy of amended federal returns.** (1) If any taxpayer fails to make return as herein required, the state board of equalization is authorized to make an estimate of the taxes due from such taxpayer from any information in its possession.

(2) The state board of equalization, for the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of net income of any corporations where information has been obtained, shall also have power to examine or to cause to have examined by any agent or representative designated by it for that purpose, any books, papers, records or memoranda bearing upon the matters required to be included in the return, and may require the attendance of any officer or employee of the corporation rendering such return or the attendance of any other person having knowledge in the premises, and may take testimony and require proof material for its information.

(3) Every corporation shall, upon request of the state board of equalization, furnish a copy of its federal income tax return and the computation schedule filed for such taxable year or years as the said board may specify in its request. If the amount of a corporation taxable income reported on its federal income tax return or the computation schedule filed for any taxable year is changed or corrected by the United States internal revenue service or other competent authority, the corporation shall report such proposed change or correction to the state board of equalization within ninety (90) days after receiving official notice thereof. Any corporation filing an amended federal income tax return changing or correcting its taxable income for any taxable year shall also file an amended return with the state board of equalization within ninety (90) days thereafter.

**History:** En. Sec. 13, Ch. 166, L. 1933; amd. Sec. 2, Ch. 142, L. 1969.

**Amendments**

The 1969 amendment redesignated subsections (a) and (b) as subsections (1) and (2); and added subsection (3).

**Effective Date**

Section 3 of Ch. 142, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 27, 1969.

CHAPTER 16—LICENSE TAXES—ELECTRICAL ENERGY PRODUCERS

**Section**

84-1601. Electrical energy producers' license tax.

84-1602. Payment of tax—not to be set out on customers' bills.

**84-1601. (2343.1) Electrical energy producers' license tax.** That in addition to the license tax now provided by law, each and every individual, firm, partnership, common-law trust, corporation, association or other organization now engaged in the generation, manufacture or production of electricity, and electrical energy in the state of Montana, either through water power or by any other means, for barter, sale or exchange and hereinafter referred to as the "producer," shall on or before the fifteenth day of each calendar month beginning with the fifteenth day of May, 1969, render a statement to the state board of equalization of the state of Montana, showing the gross amount of money received on account of sales of electricity and electrical energy during the preceding calendar month without any deduction, and shall pay a license tax thereon in the sum of one and four hundred thirty-eight thousandths per cent (1.438%) of such gross amount as shown on such statement in the manner and within the time hereinafter provided; and such tax shall be effective for the taxable year commencing April 1, 1969, and also for each taxable year thereafter.

**History:** En. Sec. 1, Ch. 51, Ex. L. 1933; amd. Sec. 1, Ch. 83, L. 1937; amd. Sec. 1, Ch. 214, L. 1957; amd. Sec. 1, Ch. 5, Ex. L. 1969; amd. Sec. 1, Ch. 391, L. 1971.

**Amendments**

The 1969 amendment substituted "May, 1969" for "August, 1957" and added a proviso increasing the rate of tax from  $1\frac{1}{4}\%$  to 1.438% for the two taxable years commencing on or after April 1, 1969.

The 1971 amendment made the 1.438% rate permanent and added the clause following the final semicolon.

**Effective Date**

Section 2 of Ch. 391, Laws 1971 read "This act is effective on April 1, 1971."

**Cross-References**

Multistate tax compact, sec. 84-6701.

**84-1602. (2343.2) Payment of tax—not to be set out on customers' bills.** Said license tax shall be remitted with the statement and paid on or before the fifteenth (15th) day of each month. No bill, statement or account rendered or given any customer by any organization affected by the provisions of this act shall set out or contain, as a separate item, any amount on account or by reason of, the license tax imposed by this act.

**History:** En. Sec. 2, Ch. 51, Ex. L. 1933; amd. Sec. 2, Ch. 5, Ex. L. 1969.

**Amendments**

The 1969 amendment deleted "beginning with the fifteenth (15th) day of April, 1934" at the end of the first sentence.

**Effective Date**

Section 3 of Ch. 5, Ex. Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 19, 1969.



CHAPTER 17—LICENSE TAXES—EXPRESS COMPANIES

**84-1702. (2306) Statements to be filed with state board of equalization.**

**Cross-References**

Multistate tax compact, sec. 84-6701.

CHAPTER 18—LICENSE TAXES—GASOLINE DEALERS AND DISTRIBUTORS—SPECIAL FUEL TAX

**Section**

84-1832.	<b>Tax imposed.</b>
84-1832.1.	Tax to be collected on diesel fuel and liquid petroleum gas, when.
84-1833.	Special fuel dealers' and special fuel users' licenses and special fuel vehicle permits.
84-1835.	Returns and payments.
84-1836.	Credits.
84-1837.	Procedures for credits.
84-1838.	Administration.
84-1840.	Disposition of funds.
84-1842.	Special fuel user's temporary trip permits—agents by whom issued.
84-1845.	Short title.
84-1846.	Definitions.
84-1847.	Gasoline license tax—amount.
84-1849.	Distributors' statements—payment of the tax.
84-1850.	Examination of records.
84-1851.	Records to be kept.
84-1852.	Inspection of records.
84-1853.	Invoice of distributors and aviation dealers.
84-1854.	Information reports.
84-1855.	Refund of gasoline license tax—procedure.
84-1855.1.	Unlawful use of aviation gasoline.
84-1856.	Timely mailing treated as timely filing and paying.
84-1857.	License and bond of gasoline distributors.
84-1858.	Penalties—delinquent payment—procedure in case of failure to file statement or pay tax—lien for tax.
84-1859.	Penalties.
84-1860.	Statute of limitations.
84-1861.	Rules and regulations to be established by state board.

**84-1801, 84-1801.1, 84-1802, 84-1802.1, 84-1803, 84-1803.1, 84-1804, 84-1805, 84-1805.1, 84-1806 to 84-1811. (2381.11 to 2381.21) Repealed.**

**Repeal**

Sections 84-1801, 84-1801.1, 84-1802, 84-1802.1, 84-1803, 84-1803.1, 84-1804, 84-1805, 84-1805.1, 84-1806 to 84-1811 (Secs. 1, 3 to 12, Ch. 19, L. 1927; Sec. 4, Ch. 92 L. 1929; Sec. 1, Ch. 175, L. 1929; Sec. 4, Ch. 6, L. 1931; Sec. 1, Ch. 170, L. 1933; Sec. 1, Ch. 116, L. 1935; Sec. 1, Ch. 63, L. 1943; Sec. 1, Ch. 202, L. 1949; Sec. 1, Ch. 52, L. 1951; Sec. 1, Ch. 217, L. 1953; Secs. 1, 2, Ch. 17, L. 1955; Sec. 1, Ch. 230, L. 1957; Sec. 1, Ch. 175, L. 1959; Secs. 1, 2, Ch. 64,

L. 1963; Secs. 2 to 6, Ch. 70, L. 1963; Sec. 214, Ch. 147, L. 1963; Sec. 1, Ch. 6, Ex. L. 1967; Sec. 1, Ch. 355, L. 1969), relating to the gasoline license tax, were repealed by Sec. 20, Ch. 369, Laws 1969.

**Compiler's Notes**

Section 1 of Ch. 355, Laws 1969 purported to amend section 84-1801.1 to increase the tax from six and one-half cents to seven cents for the period from July 1, 1969 to July 1, 1971.

**84-1813. (2381.23) Repealed.**

**Repeal**

Section 84-1813 (Sec. 2, Ch. 116, L. 1935; Sec. 1, Ch. 210, L. 1955; Sec. 1, Ch. 73, L. 1963), relating to collection of

tax on motor fuel, was repealed by Sec. 1, Ch. 60, L. 1969 and Sec. 20, Ch. 369, Laws 1969. The language of section 84-1813 was re-enacted as section 84-1832.1.

**84-1814. (2381.24) Repealed.****Repeal**

Section 84-1814 (Sec. 15, Ch. 19, L. 1927), relating to delinquency in payment

of the gasoline license tax as a misdemeanor, was repealed by Sec. 20, Ch. 369, Laws 1969.

**84-1818, 84-1818.1, 84-1819 to 84-1823. (2396.4 to 2396.9) Repealed.****Repeal**

Sections 84-1818, 84-1818.1, 84-1819 to 84-1823 (Secs. 1, 2, Ch. 17, L. 1927; Sec. 1, Ch. 168, L. 1929; Sec. 1, Ch. 175, L. 1931; Secs. 1 to 4, Ch. 157, L. 1933; Sec. 1, Ch. 96, L. 1937; Sec. 1, Ch. 67, L. 1939; Sec. 1, Ch. 130, L. 1947; Sec. 1, Ch. 168, L. 1949; Sec. 1, Ch. 198, L. 1949; Sec. 1, Ch. 221, L. 1953; Secs. 3, 4, Ch. 17,

L. 1955; Sec. 1, Ch. 212, L. 1955; Sec. 1, Ch. 17, L. 1963; Secs. 3, 4, Ch. 64, L. 1963; Sec. 1, Ch. 70, L. 1963; Sec. 6, Ch. 126, L. 1963; Sec. 221, Ch. 147, L. 1963; Sec. 1, Ch. 224, L. 1963; Sec. 2, Ch. 251, L. 1967), relating to gasoline tax refunds and to the licensing of gasoline dealers and distributors, were repealed by Sec. 20, Ch. 369, Laws 1969.

**84-1828, 84-1829. Repealed.****Repeal**

Sections 84-1828 and 84-1829 (Secs. 5, 6, Ch. 162, L. 1945), relating to the definition of terms and effect of the "Special Fuel

Tax Act" on the license tax upon diesel fuel, were repealed by Sec. 20, Ch. 369, Laws 1969.

**84-1830. Title.****Cross-References**

Multistate tax compact, sec. 84-6701.

**84-1832. Tax imposed.** There is hereby levied and imposed a tax on the use of each and every gallon of special fuel in any motor vehicle while operated upon the highways, equivalent to the lawful tax levied on motor fuel under section 84-1832.1. Said tax, with respect to all special fuel delivered by a special fuel dealer into supply tanks of motor vehicles in this state, shall attach at the time of such delivery and shall be collected by such special fuel dealer from the special fuel user and shall be paid over to the board as hereinafter provided. Said tax, with respect to special fuel acquired by any special fuel user in any manner other than by delivery by a special fuel dealer into a fuel supply tank of a motor vehicle, shall attach at the time of the consumption of such fuel in the propulsion of a motor vehicle upon the highways of the state and shall be paid over to the board by the special fuel user as hereinafter provided. The various counties, incorporated cities and towns and school districts of this state shall be exempt from the levy and imposition of this tax.

**History:** En. Sec. 3, Ch. 162, L. 1955; amd. Sec. 2, Ch. 66, L. 1963; amd. Sec. 3, Ch. 60, L. 1969; amd. Sec. 1, Ch. 12, L. 1971; amd. Sec. 1, Ch. 277, L. 1971.

**Compiler's Notes**

This section was amended twice in 1971, once by Ch. 12 and once by Ch. 277. Chapter 12 was approved on February 2, 1971, and Ch. 277 on March 10, 1971. Since Ch. 277 was later in time of approval and since it deleted the clause containing the reference corrected by Ch. 12, the text of Ch. 277 is used above.

**Amendments**

The 1969 amendment substituted the reference to "section 84-1832.1" for a reference to repealed "section 84-1813."

Chapter 12, Laws of 1971, substituted a reference to section 84-1847 for a reference to a section 84-1802 in a clause relating to liquid petroleum gases appearing at the end of the first sentence.

Chapter 277, Laws of 1971, deleted "or on liquid petroleum gases under section 84-1847" from the end of the first sentence.

**84-1832.1. Tax to be collected on diesel fuel and liquid petroleum gas, when.** The state board of equalization shall, under the provisions of rules and regulations issued by said board, collect or cause to be collected from the owners or operators of motor vehicles a tax in an amount equal to nine cents (\$.09) for each gallon of diesel fuel or other volatile liquid, of less than forty-six degrees (46°) A.P.I. (American Petroleum Institute) gravity test, and seven cents (\$.07) for each gallon of liquid petroleum gas when actually sold or used to produce motor power to propel motor vehicles upon the public highways or streets within the state of Montana, or used in motor vehicles, motorized equipment and the internal combustion of any and all engines including stationary engines used in connection with any and all work performed under any and all contracts pertaining to the construction, reconstruction or improvement of any highway or street and their appurtenances awarded by any and all public agencies, including federal, state, county, municipalities, or other political subdivision.

**History:** En. Sec. 84-1832.1 by Sec. 2, Ch. 60, L. 1969; amd. Sec. 2, Ch. 277, L. 1971.

to special fuel taxes; and amending section 84-1832, R. C. M. 1947, to change the reference to section 84-1813 therein to 84-1832.1.

**Title of Act**

An act to repeal section 84-1813, R. C. M. 1947, and to re-enact its language as a new section for the purpose of removing the statute establishing a tax on diesel fuel from the gasoline license tax laws and its proper placement in the laws pertaining

**Amendments**

The 1971 amendment inserted the clause imposing a tax of seven cents per gallon on liquid petroleum gas in the middle of the section.

**84-1833. Special fuel dealers' and special fuel users' licenses and special fuel vehicle permits.** (a) Required: It shall be unlawful for any person to act as a special fuel dealer in this state unless such person is the holder of an uncanceled fuel dealers' license issued to him by the board.

Every special fuel user shall obtain from the board, prior to the use of such special fuel for the propulsion of a motor vehicle or vehicles in this state, a special fuel users' license, and a special fuel vehicle permit for each such vehicle or vehicles operated by him upon the highways as herein defined, which permit shall at all times be carried in the vehicle for which it was issued, and shall be exhibited for inspection on request of any checking station officer, Montana highway patrol officer, any member of the state board of equalization or any authorized employee of said board, or any other law enforcement officer.

Any out of state user who operates a recreational passenger car, pickup truck or family motor coach powered by special fuels shall secure a special fuel user's "Courtesy" vehicle permit. The permit shall not be transferable and shall be valid for ninety (90) days. Permits will be issued at no cost to the user by the board of equalization, scale house personnel and gross vehicle weight patrol crews. The board may require the user who has fuel capacity in excess of thirty (30) gallons to file a report and pay the tax on fuel used in Montana on which the tax has not been paid.

(b) Application: Application for a special fuel dealer's license, a special fuel user's license, or a special fuel vehicle permit shall be made to the board unless otherwise provided herein.



(c). \* \* \* [Same as parent volume.]

(d) Bond: Except as herein provided, no special fuel dealer's license or special fuel user's license shall be issued to any person or continued in force unless such person has furnished bond, as defined in section 84-1831 (i) and in such form as the board may require to secure its compliance with this act, and the payment of any and all taxes, interest and penalties due and to become due hereunder. Upon application, the board may waive the bond requirement of any resident special fuel user who establishes to the reasonable satisfaction of the board that the tax as herein provided is not delinquent or that interest or penalties are not accrued under the provisions of this act.

The total amount of the bond or bonds required of any special fuel dealer or special fuel user shall be equivalent to twice his estimated monthly tax payments as hereinafter provided, determined in such manner as said board may deem proper; provided, however, that the total amount of the bond or bonds shall never be less than five thousand dollars (\$5,000) for any special fuel user awarded a contract in accordance with section 84-1832.1, nor less than five hundred dollars (\$500) for any other special fuel user; and not less than one thousand dollars (\$1,000) for a special fuel dealer.

(e) to (k). \* \* \* [Same as parent volume.]

**History:** En. Sec. 4, Ch. 162, L. 1955; amd. Sec. 1, Ch. 216, L. 1957; amd. Sec. 8, Ch. 70, L. 1963; amd. Sec. 1, Ch. 61, L. 1969; amd. Sec. 2, Ch. 12, L. 1971; amd. Sec. 3, Ch. 277, L. 1971.

#### Compiler's Notes

This section was amended twice in 1971, once by Ch. 12 and once by Ch. 277. Neither amendatory act mentioned nor incorporated the changes made by the other. Since the changes made by the two acts do not appear to conflict, the compiler has made a composite section incorporating the changes made by both amendatory acts.

#### Amendments

The 1969 amendment inserted the second sentence in subsection (d) and, in the second paragraph of that subsection, substituted "five thousand dollars . . . any other special fuel user" for "five hundred dollars (\$500.00), for a special fuel user."

Chapter 12, Laws of 1971, substituted section "84-1832.1" for "84-1932.1" in the

second paragraph of subsection (d), thus correcting the citation to a tax on certain special fuel users.

Chapter 277, Laws of 1971, added the third paragraph to subsection (a); added "unless otherwise provided herein" at the end of subsection (b); inserted "Except as herein provided" at the beginning of the first paragraph of subsection (d); inserted "resident" before "special fuel user" in the second sentence of the first paragraph of subsection (d); substituted "the tax as herein provided is not delinquent or that interest or penalties are not accrued" for "no tax, interest or penalties are accrued" in the second sentence of the first paragraph of subsection (d); and made minor changes in punctuation and style.

#### Effective Date

Section 3 of Ch. 12, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 2, 1971.

**84-1835. Returns and payments.** (a) Returns: For the purpose of determining the amount of his liability for the tax herein imposed, each special fuel dealer and each special fuel user shall file with the board, on forms prescribed by said board, a monthly tax return.

Upon annual application the board shall waive the filing of a monthly tax return of any special fuel user who establishes that such user's monthly tax liability is or will be ten dollars (\$10) or less.

Such user shall make an annual report and return to the board, on forms prescribed by said board on or before the 25th day of January of each year hereafter. Should the board determine that a user filing annual returns as herein provided is delinquent in making reports and payments, it shall require such person to file monthly returns as herein provided. Such return, annual or monthly, shall contain a declaration by the person making the same, to the effect that the statements contained are true and are made under penalties of perjury, which declarations shall have the same force and effect as a verification. The return shall show such information as the board may reasonably require for the proper administration and enforcement of this act; provided, however, that if a special fuel dealer or user is also a wholesale distributor of special fuel at a location where special fuel is delivered into the supply tank of a motor vehicle, and if separate storage is provided thereat from which special fuel is delivered or placed into fuel supply tanks of motor vehicles, the monthly return to the board need not include inventory control data covering bulk storage from which wholesale distribution of special fuel is made. The special fuel dealer or special fuel user shall file the return on or before the twenty-fifth (25th) day of the next succeeding calendar month following the monthly period to which it relates; provided, however, that for good cause the board may grant a taxpayer a reasonable extension of time for filing, but not to exceed thirty (30) days.

Any claim, statement, remittance, or other document which is transmitted to this state through the United States mail, shall be deemed filed and received by this state on the date shown by the post office cancellation mark stamped upon the envelope or other appropriate wrapper containing it. Any claim, statement, remittance or other document which is mailed but not received by this state or where received with a cancellation mark that is illegible, erroneous, or omitted, shall be deemed filed and received on the date mailed if the sender establishes by competent evidence that the claim, statement, remittance, or other document was deposited in the United States mail on or before the date due for filing. In cases of such nonreceipt of a claim, statement, remittance, or other document, the sender must file with the state a duplicate within thirty (30) days after written notification is given to the sender by the state of its nonreceipt of such claim, statement, remittance, or other document.

If any claim, statement, remittance or other document is sent by United States registered mail, certified mail or certificate of mailing, a record authenticated by the United States Post Office of such registration, certification or certificate shall be considered competent evidence that the report, claim, tax return, statement, remittance or other document was mailed to the addressee, and the date of registration, certification or certificate shall be deemed the postmarked date.

If the final filing date falls on a Saturday, Sunday or legal holiday, the next secular or business day shall be the final filing date. Such reports shall be considered filed or received on the date or as provided in this chapter.

(b) and (c). \* \* \* [Same as parent volume.]

(d) Refusal or failure to file return or pay tax when due: In case of any special fuel dealer or special fuel user who refuses or fails to file a return required by this act within the time prescribed by subsection (a) of this section, there is hereby imposed a penalty of twenty-five dollars (\$25) or a sum equal to twenty-five per cent (25%) of the tax due, whichever is greater, together with interest at the rate of one per cent (1%) on the tax due, for each calendar month or fraction thereof during which such refusal or failure continues; provided, however, that if any such special fuel dealer or special fuel user shall establish to the satisfaction of the board that his failure to file a return within the time prescribed was due to reasonable cause, the board shall waive the penalty provided by this subsection.

(e) to (i). \* \* \* [Same as parent volume.]

**History:** En. Sec. 6, Ch. 162, L. 1955; amd. Sec. 9, Ch. 70, L. 1963; amd. Sec. 1, Ch. 52, L. 1969; amd. Sec. 2, Ch. 61, L. 1969; amd. Sec. 4, Ch. 277, L. 1971.

#### Amendments

Chapter 52, Laws of 1969, substituted "twenty-five dollars (\$25)" for "one hundred dollars (\$100)" after "there is hereby imposed" in subsection (d).

Chapter 61, Laws of 1969, inserted in subsection (a) the language now appearing in the fourth and fifth paragraphs and a final paragraph reading: "Upon annual application the board may waive the filing of a monthly tax return of any special fuel user who establishes to the reasonable satisfaction of the board that no tax, interest or penalties are accrued under the provisions of this act."

The 1971 amendment inserted in subsection (a) the second paragraph and the first and second sentences of the third

paragraph; inserted "annual or monthly" after "such return" at the beginning of the third sentence of the third paragraph of subsection (a); deleted from subsection (a) the final paragraph added by Ch. 61, Laws of 1969; and made minor changes in punctuation and style.

#### Repealing Clause

Section 5 of Ch. 277, Laws 1971 repealed all acts and parts of acts in conflict therewith.

#### Effective Date

Section 2 of Ch. 52, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 20, 1969.

Section 6 of Ch. 277, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 10, 1971.

**84-1836. Credits.** Any licensed special fuel user or licensed special fuel dealer who has paid a special fuel tax either directly or to the vendor from whom it was purchased, shall receive credit in the amount of any tax paid on special fuel exported for use outside of this state, or for any use off the public roads and highways of this state, or for any overpayment of special fuel taxes not due to the state. Special fuel carried from this state in the fuel tank of a motor vehicle is deemed to be exported from this state.

Any licensed special fuel user who purchases a temporary special fuel permit, and thereafter applies for a special fuel vehicle permit for the same vehicle in less than eleven (11) days after the temporary permit is issued, shall receive credit in the amount of the temporary permit fee.

**History:** En. Sec. 7, Ch. 162, L. 1955; amd. Sec. 1, Ch. 104, L. 1967.

#### Amendments

The 1967 amendment substituted "licensed special fuel user or licensed special

fuel dealer" for "person" near the beginning of the first paragraph; added "or for any use \* \* \* to the state" at the end of the first sentence of the first paragraph; and added the second paragraph.

**84-1837. Procedures for credits.** Should a licensed special fuel user or licensed special fuel dealer desire to receive refund of special fuel taxes or of



the temporary permit fee, the user or dealer shall make a signed and written request to the board requesting those amounts then due. Any amount determined to be creditable by the board under section 84-1836 shall first be credited on any amounts then due and payable from the special fuel dealer or special fuel user to whom the refund is due, and the board shall then certify the balance to the credit of the dealer or user, and a warrant shall be drawn upon the state treasurer for the amount of such claim and same shall be paid in the same manner as other claims against the state are paid.

Provided however, in case any special fuel user or special fuel dealer fails or neglects to file a request for refund of special fuel taxes within twelve (12) months from the date his special fuel license became canceled, the board shall be under no obligation to make a refund.

**History:** En. Sec. 8, Ch. 162, L. 1955; sentence of the first paragraph; added  
amd. Sec. 2, Ch. 104, L. 1967. "and a warrant shall be \* \* \* claims  
against the state are paid" at the end of  
the first paragraph; and added the second  
paragraph.

**Amendments**

The 1967 amendment inserted the first

sentence of the first paragraph; added  
"and a warrant shall be \* \* \* claims  
against the state are paid" at the end of  
the first paragraph; and added the second  
paragraph.

**84-1838. Administration.** (a). \* \* \* [Same as parent volume.]

(b) Examination of records: The board or its authorized representative is hereby empowered to examine the books, papers, records and equipment of any special fuel dealer or special fuel user or any person dealing in, transporting, or storing special fuel as defined in this act and to investigate the character of the disposition which any person makes of such special fuel in order to ascertain and determine whether all excise taxes due hereunder are being properly reported and paid. If such books, papers, records and equipment are not maintained in this state at the time of demand, they shall be furnished to the board for review and shall be accompanied by the special fuel dealer or special fuel user or such dealer or user shall bear the reasonable cost of examination by an agent authorized or designated by the board at the place where such books or records are kept provided the taxpayer shall not be liable for such costs for a period exceeding one (1) week or for such longer period as he may consent to in writing, unless the result of said examination is the payment of a tax deficiency.

(c) and (d). \* \* \* [Same as parent volume.]

**History:** En. Sec. 9, Ch. 162, L. 1955;  
amd. Sec. 1, Ch. 106, L. 1967.

**Amendments**

The 1967 amendment inserted "and shall be accompanied by the special fuel dealer or special fuel user" after "review" in the second sentence of subsection (b).

**84-1840. Disposition of funds.** All taxes, interest and penalties collected under this act shall be turned over promptly to the state treasurer and the state treasurer shall place the same in the earmarked revenue fund to the credit of the state highway department.

(1) The lesser of the following amounts from funds collected under this act shall be allocated each fiscal year to the counties and incorporated cities and towns in Montana for construction, reconstruction, maintenance

and repair of rural roads, and city or town streets and alleys, as provided in subsections [(1)] (a) and (b) hereof,

(i) Three million dollars (\$3,000,000) or

(ii) Sixty-six per cent (66%) of the amount of state matching funds saved under the provisions of clause B of section 120 (a) of Title 23, United States Code, but not less than one million five hundred thousand dollars (\$1,500,000).

In any fiscal year when the amount of funds allocated to the counties and incorporated cities and towns under subsection (1) (ii) does not equal three million dollars (\$3,000,000) the difference between the three million dollars (\$3,000,000) and the funds allocated for that year shall carry forward and be allocated to the counties and incorporated cities and towns in subsequent fiscal years.

(a) Forty per cent (40%) shall be divided among the various counties in the following manner:

(i) Forty per centum (40%) in the ratio that the rural road mileage in each county exclusive of the federal-aid interstate system and the federal-aid primary system bears to the total rural road mileage in the state exclusive of the federal-aid interstate system and the federal-aid primary system.

(ii) Forty per centum (40%) in the ratio that the rural population in each county outside incorporated cities and towns bears to the total rural population in the state outside incorporated cities and towns.

(iii) Twenty per centum (20%) in the ratio that the land area of each county bears to the total land area of the state.

(b) Sixty per cent (60%) shall be divided among the incorporated cities and towns in the following manner:

(i) Fifty per cent (50%) of the sum shall be divided in the ratio that the population within the corporate limits of the city or town bears to the total population within corporate limits of all the cities and towns in Montana.

(ii) Fifty per cent (50%) shall be divided in the ratio that the city or town street and alley mileage, exclusive of the federal-aid interstate system and the federal-aid primary system, within corporate limits bears to the total street and alley mileage, exclusive of the federal-aid interstate system and federal-aid primary system, within the corporate limits of all cities and towns in Montana.

(2) All funds hereby allocated to counties, cities and towns shall be used exclusively for the construction, reconstruction, maintenance and repair of rural roads, city or town streets and alleys, or for the share which such city, town or county might otherwise expend for proportionate matching of federal funds allocated for the construction of roads or streets which are part of the federal-aid primary or secondary highway system, or urban extensions thereto, provided that not more than ten per cent (10%) or one thousand dollars (\$1,000), whichever amount is greater, of the funds

allocated each fiscal year, beginning with the fiscal year starting July 1, 1971, to any county, incorporated city and town may be expended for maintenance and repair of rural roads or city or town streets.

(3) Upon receipt of the allocation provided herein, the county commissioners, in the case of counties, or the governing body, in the case of incorporated cities or towns, shall propose the expenditure of said funds to the state highway commission. The commission may consult with the county commissioners or the governing body proposing expenditures before approving the same provided, however, that before any contract for the expenditure of funds provided herein shall be let, an agreement covering the same shall be executed by both the proposing body and the state highway commission.

(4) All construction, reconstruction, maintenance and repair authorized herein shall be pursuant to the design and subject to the supervision of the state highway commission, and all funds hereby allocated to counties, cities and towns shall be disbursed by the state highway commission to the lowest responsible bidder according to the bidding procedures specified in chapter 41, Title 32 of this code except that not more than seven thousand five hundred dollars (\$7,500) of the funds allocated each fiscal year to any county, incorporated city and town may be expended without being submitted to bids.

(5) The state highway commission shall make and establish such rules and regulations as may be necessary to carry out the intent of this act and shall keep records of the funds allocated to each city or town, and the subsequent expenditure of said funds.

(6) For the purposes of this act where distribution of funds is made on a basis related to population, the population shall be determined by the last preceding official federal census.

(7) For the purposes of this act where determination of mileage is necessary for distribution of funds it shall be the responsibility of the cities, towns and counties to furnish to the state highway commission a yearly certified statement indicating the total mileage within their respective areas applicable to this act. All mileage submitted shall be subject to review and approval by the state highway commission.

(8) None of the funds authorized by this section shall be used for the purchase of capital equipment.

**History:** En. Sec. 11, Ch. 162, L. 1955; amd. Sec. 213, Ch. 147, L. 1963; amd. Sec. 2, Ch. 6, Ex. L. 1967; amd. Sec. 2, Ch. 355, L. 1969; amd. Sec. 1, Ch. 384, L. 1971.

#### Amendments

The 1967 amendment added subdivisions (1) through (7).

The 1969 amendment, in subdivision (1), substituted "The lesser of the following amounts from" for "One million five hundred thousand dollars (\$1,500,000) of the," inserted "maintenance" after "reconstruction," and inserted subsections (1) (i) and (ii), and the final paragraph; in item (1) (a), substituted "Forty per cent

(40%)" for "Six hundred thousand dollars (\$600,000)"; in item (b) substituted "Sixty per cent (60%)" for "Nine hundred thousand dollars (\$900,000)"; inserted "exclusive of the federal-aid interstate system and the federal-aid primary system" after "alley mileage" in two places in (b) (ii); inserted "maintenance" after "reconstruction" in subdivision (2); inserted "maintenance" after "reconstruction" and added "with the exception \* \* \* submitted to bid" in subdivision (4); and added subdivision (8).

The 1971 amendment added the proviso to subdivision (2); substituted the exception at the end of subdivision (4) for



"with the exception that five per cent (5%) of the funds allocated each fiscal year to any county, incorporated city and town or seven thousand five hundred dollars (\$7,500), whichever amount is greater, may be expended for maintenance of rural roads and city or town streets without being submitted to bid"; and deleted from the end of subdivision (8) a second sentence reading: "Section 2 (b), effective July 1, 1971, the total amount of funds allocated each fiscal year in section 2 (a) (1) to the counties and incorporated cities and towns shall reduce to one million five hundred thousand dollars (\$1,500,000)."

#### Repealing Clauses

Section 3 of Ch. 6, Ex. Laws 1967 repealed all acts and parts of acts in conflict therewith.

Section 3 of Ch. 355, Laws 1969 repealed all acts and parts of acts in conflict therewith.

Section 3 of Ch. 384, Laws 1971 repealed all acts and parts of acts in conflict therewith.

#### Separability Clauses

Section 4 of Ch. 6, Ex. Laws 1967 read "The provisions of this act shall be severable and if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitutional or void, the remainder of this act shall continue in full force and effect."

Section 4 of Ch. 355, Laws 1969 read "The provisions of this act shall be severable and if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitutional or void, the remainder of this act shall continue in full force and effect."

Section 2 of Ch. 384, Laws 1971 read "The provisions of this act shall be severable and if any of its sections, provisions, exceptions, sentences, clauses, phrases, or parts be held unconstitutional or void, the remainder of this act shall continue in full force and effect."

**84-1842. Special fuel user's temporary trip permits—agents by whom issued.** Any person operating a special fuel-powered vehicle upon the public roads and highways of this state who fails or neglects to carry in the vehicle a valid special fuel vehicle permit, as provided by section 84-1833, shall be required to purchase a special fuel user's temporary trip permit. The permits will be issued by scale house personnel, gross vehicle weight (g.v.w.) patrol crews, Montana highway patrolmen, and such other enforcing agents as the board of equalization may prescribe by order, rule or regulation.

**History:** En. Sec. 1, Ch. 200, L. 1961; amd. Sec. 1, Ch. 105, L. 1967.

#### Amendments

The 1967 amendment substituted the

present first sentence of the section for a former first sentence which read "A temporary permit shall be issued to all unlicensed users of all special fuel vehicles operating within the state of Montana."

**84-1845. Short title.** This act may be cited as the "Distributor's Gasoline License Tax Act."

**History:** En. Sec. 1, Ch. 369, L. 1969.

#### Title of Act

An act providing for the amount of the distributor's gasoline license tax; payment of the tax by distributors; establishing a refund procedure; licensing of gasoline

distributors; empowering the state board of equalization to establish regulations; providing for enforcement of the act by penalties; and repealing sections 84-1801 through 84-1814, 84-1818 through 84-1823, 84-1828, and 84-1829, R. C. M. 1947, relating to the gasoline dealer's license tax.

**84-1846. Definitions.** As used in this act, the following definitions shall apply:

(1) The term "gasoline" includes all products commonly or commercially known or sold as gasolines, including casinghead gasoline, natural gasoline, aviation gasoline and all flammable liquids, composed of a mixture of selected hydrocarbons expressly manufactured and blended for the

purpose of effectively and efficiently operating internal combustion engines. The term "gasoline" does not include special fuels as defined in section 84-1831 (e).

(2) The word "person" means any person, firm, association, joint-stock company, syndicate or corporation.

(3) The words "motor vehicle" mean all vehicles operated or propelled upon the public highways or streets of this state, in whole or in part by the combustion of gasoline.

(4) The word "use" shall include and mean the operation of motor vehicles upon the public roads or highways of the state of Montana, or of any political subdivision thereof.

(5) The word "import" shall include and mean to receive into any person's possession or custody first after its arrival and coming to rest at destination within the state of Montana of any gasoline shipped or transported into this state from point of origin without this state, other than in the fuel supply tank of a motor vehicle.

(6) Gasoline deemed to be "distributed." (a) Gasoline refined, produced, manufactured, or compounded in this state and placed in tanks thereat, or gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks thereat, or gasoline imported into this state and placed in storage at refineries or pipeline terminals, shall be deemed to be distributed, for the purpose of this act, at the time the gasoline is withdrawn from such tanks, refinery or terminal storage for sale or use in this state or for the transportation to destinations in this state other than by pipeline to another refinery or pipeline terminal in this state. When withdrawn from such tanks, refinery or terminal, such gasoline may be distributed only by a person who is the holder of a valid distributor's license.

(b) Gasoline imported into this state other than that gasoline placed in storage at refineries or pipeline terminals, shall be deemed to be distributed after it has arrived in and is brought to rest in this state.

(7) The word "distributor" means

(a) any person who engages in the business in this state of producing, refining, manufacturing or compounding gasoline for sale, use or distribution,

(b) Any person who imports gasoline for sale, use or distribution.

(c) any dealer licensed as of January 1, 1969, except a dealer at an established airport.

(8) The words "aviation gasoline" mean gasoline or any other liquid fuel by whatsoever name such liquid fuel may be known or sold, compounded for use in and sold for use in aircraft, including but not limited to any and all such gasoline or liquid fuel meeting or exceeding the minimum specifications prescribed by the United States for use by its military forces in aircraft.

(9) "Aviation dealer" means any person in this state engaged in the business of selling aviation gasoline either from a wholesale or retail outlet on which the license tax has been paid to a licensed distributor as herein provided for.

**History:** En. Sec. 2, Ch. 369, L. 1969; amd. Sec. 1, Ch. 13, L. 1971; amd. Sec. 1, Ch. 204, L. 1971.

#### Compiler's Notes

This section was amended twice in 1971, once by Ch. 13 and once by Ch. 204. Neither amendatory act mentioned nor incorporated the changes made by the other. Since the changes made by the two acts do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendatory acts.

**84-1847. Gasoline license tax—amount.** Every distributor shall pay to the state board of equalization a license tax for the privilege of engaging in and carrying on business in this state in an amount equal to one cent (1¢) for each gallon of aviation gasoline, which shall be allocated to the aeronautics commission as provided by section 1-501, R. C. M. 1947, as amended, and seven cents (7¢) for each gallon of all other gasoline distributed by him within the state and upon which the gasoline license tax has not been paid by any other distributor. Gasoline exported or sold for export out of the state of Montana shall not be included in the measure of the distributor's license tax.

**History:** En. Sec. 3, Ch. 369, L. 1969; amd. Sec. 1, Ch. 202, L. 1971; amd. Sec. 2, Ch. 204, L. 1971.

#### Compiler's Notes

This section was amended twice in 1971, once by Ch. 202 and once by Ch. 204. Both acts were approved by the governor on March 3, 1971. Chapter 204 incorporated the change made by Ch. 202 and the title to Ch. 204 referred to "the present seven cents." Therefore, the compiler has used the text of Ch. 204 above.

#### Amendments

Chapter 13, Laws of 1971, deleted from the end of paragraph (7)(b) a provision reading, "and no refund shall be allowed of that portion of the tax per gallon upon aviation gasoline allocated to the state aeronautics commission by section 1-501."

Chapter 204, Laws of 1971, added subdivision (9) and made minor changes in style.

#### Amendments

Chapter 202, Laws of 1971 increased the tax from six and one-half cents to seven cents per gallon.

Chapter 204, Laws of 1971, included the change made by Ch. 202; reduced the tax on aviation gasoline to one cent; and inserted the clause providing for allocation to the aeronautics commission.

#### Effective Date

Section 2 of Ch. 202, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 3, 1971.

### 84-1848. Repealed.

#### Repeal

Section 84-1848 (Sec. 4, Ch. 369, L. 1969), relating to aviation gasoline tax

exemption certificates, was repealed by Sec. 3, Ch. 204, Laws 1971.

**84-1849. Distributors' statements—payment of the tax.** Each distributor shall, not later than the twenty-fifth day of each calendar month render a true statement to the state board of equalization, duly signed, of all gasoline distributed and received by him in this state during the preceding calendar month, and containing such other information as the state board of equalization may reasonably require in order to administer the gasoline license tax law. The statement shall be accompanied by a payment in an amount equal to the tax imposed by section 3 (84-1847) of this act, less any refund credit issued under section 11 (84-1855) of this act, and less two per cent (2%) of the first six cents (6¢) tax which shall be deducted



by the distributor as an allowance for evaporation and other loss of gasoline distributed by such distributor; provided, however, that no such allowance shall be deducted from the one cent (1¢) tax on aviation gasoline.

Any distributor engaged in or carrying on his business at more than one (1) place or location in this state may include all such places of business in one (1) statement.

**History:** En. Sec. 5, Ch. 369, L. 1969; amd. Sec. 4, Ch. 204, L. 1971.

**Amendments**

The 1971 amendment substituted the proviso at the end of the first paragraph for a separate sentence reading "In addition a distributor may deduct for each

gallon of aviation gasoline sold by him and for which he submits a valid gasoline tax exemption certificate, an amount equal to the tax per gallon except the portion thereof allocated to the state aeronautics commission by section 1-501"; and made minor changes in style.

**84-1850. Examination of records.** The board, or its authorized representative is hereby empowered to examine the books, papers, records and equipment of any gasoline distributor or any person dealing in, transporting, or storing gasoline as defined in this act and to investigate the character of the disposition which any person makes of such gasoline in order to ascertain and determine whether all excise taxes due hereunder are being properly reported and paid. If such books, papers, records and equipment are not maintained in this state at the time of demand they shall be furnished to the board for review or such dealer shall bear the reasonable cost of examination by an agent authorized or designated by the board at the place where such books or records are kept, provided the taxpayer shall not be liable for such costs for a period exceeding one (1) week or for such longer period as he may consent to in writing, unless the result of such examination is the payment of a tax deficiency.

**History:** En. Sec. 6, Ch. 369, L. 1969.

**84-1851. Records to be kept.** Each distributor or any other person dealing in, transporting, receiving or storing gasoline shall keep for a period not to exceed three (3) years such records, receipts and invoices and any other pertinent papers and information as the state board of equalization may require.

**History:** En. Sec. 7, Ch. 369, L. 1969; amd. Sec. 5, Ch. 204, L. 1971.

**Amendments**

The 1971 amendment inserted "or any other person dealing in, transporting, receiving or storing gasoline."

**84-1852. Inspection of records.** The records, receipts and invoices and any other pertinent papers supporting sales of every distributor or any person dealing in, transporting or storing gasoline shall be open and subject to inspection by the state board of equalization or any of its employees or assistants during business hours in order to ascertain the amount of license tax due.

**History:** En. Sec. 8, Ch. 369, L. 1969.

**84-1853. Invoice of distributors and aviation dealers.** Each distributor and aviation dealer in this state shall at the time of delivery, except where

authorized by the board, issue to the purchaser an invoice in which shall be stated the number of gallons of gasoline covered by such invoice and such other information as the state board of equalization may require.

**History:** En. Sec. 9, Ch. 369, L. 1969;      **Amendments**  
amd. Sec. 6, Ch. 204, L. 1971.

The 1971 amendment inserted "and aviation dealer."

**84-1854. Information reports.** Any person receiving gasoline, including every common carrier, private carrier and contract carrier of property who shall haul, receive, transport, or ship any gasoline, from any other state or foreign country into this state or from this state to any other state or foreign country or from any refinery or pipeline terminal in this state to another point within this state, shall submit to the board of equalization upon its request and within the time specified a statement showing the number of gallons of gasoline contained in each shipment in interstate commerce and the movement of such products from any refinery or pipeline terminal located within this state to another point within this state during the preceding calendar month, the names and addresses of the consignor and the consignee and the date of delivery to the consignee.

In case of any person, except licensed distributors, who refuses or fails to file a statement as herein provided for, there is hereby imposed a penalty of twenty-five dollars (\$25) for each failure or refusal, provided, however, that if any person shall establish to the satisfaction of the board that his failure to file a statement as prescribed by the board was due to reasonable cause, the board shall waive the penalty.

**History:** En. Sec. 10, Ch. 369, L. 1969.

**84-1855. Refund of gasoline license tax—procedure.** (1) Any person who shall purchase and use any gasoline, on which the Montana gasoline license tax has been paid, for operating or propelling stationary gasoline engines, tractors used off the public highways and streets, motorboats, or for cleaning or dyeing, or for any commercial use other than propelling vehicles upon any of the public highways or streets of this state, shall be allowed a refund of the amount of tax paid directly or indirectly on the gasoline so used. Provided, that such refund or drawback should in no instance exceed the tax paid or to be paid, to the state of Montana [, and no refund shall be allowed of that portion of the tax per gallon upon aviation gasoline allocated to the state aeronautics commission by section 1-501, R. C. M. 1947].

Any distributor paying the gasoline license tax to this state erroneously shall be allowed a credit or refund of the amount of tax so paid.

The application for refund shall be a signed statement on a form furnished by the board, accompanied by the invoice or invoices issued to the claimant, showing the total amount of gasoline purchased, the total amount of gasoline on which a refund is claimed, and the amount of the tax claimed for refund. Such further information pertaining to such claim shall be furnished as required by the board, provided that mileages of

vehicles, where not verifiable by mechanical recorders, may be estimated by the applicant under regulations adopted by the board. Such regulations adopted by the board may include provisions for refunding taxes on gasoline used by licensed commercial vehicles off the highway. On the reverse of the applicant's copy of such form shall be printed the instructions and rules of the board pertaining to completion of the form. If any invoice is either lost or destroyed, the purchaser may support his claim for refund by submitting an affidavit relating the circumstances of such loss or destruction and by producing such other evidence as may be required by the board.

(2) All applications for refunds shall be filed with the board of equalization within fourteen (14) months after the date on which the gasoline was purchased as shown by invoices or after the date on which the tax was erroneously paid. Provided, however, that a distributor may file a claim for refund of taxes erroneously paid within three (3) years after the date of such erroneous payment. The board shall have one hundred twenty (120) days after receiving the claim to approve or reject it. If approved, the board shall issue a credit in lieu of refund for the amount of the claim, if the claimant is a distributor. For all other persons, a warrant shall be drawn upon the state treasurer for the amount of the claim.

(3) Should the board of equalization find that the statement contains errors which are not fraudulently inserted, it may correct the statement and approve it as corrected, or the board may require the claimant to file an amended statement. If the state board of equalization determines that any claim has been fraudulently presented or is supported by invoice or invoices fraudulently made or altered or that any statement in the claim or affidavit is willfully false and made for the purpose of misleading, the board may reject such claim in full. If a claim is rejected, the board may suspend claimant's right to refund for a period not to exceed one (1) year.

(4) Any person, other than a licensed distributor, desiring to claim refund on gasoline purchased shall obtain a permit from the state board of equalization. The application for permit shall contain the applicant's name, address, occupation, nature of business, identification of machinery and equipment in which the taxable motor fuel is to be used, and any other information which may be required by the board.

(5) Each permit issued shall bear a permit number and each claim filed shall bear the permit number of the claimant. The state board of equalization shall keep a record of all permits issued and a cumulative record of refunds claimed and paid thereunder.

A fee of one dollar (\$1) shall be collected from each person to whom a refund permit is issued. No refund shall be paid to any person unless said person has first secured a refund permit and paid said fee. The refund permit must be renewed and the license fee paid every five (5) years from the date of issuance.

(6) Any person, other than a licensed distributor, shall obtain a permit from the state board of equalization prior to selling gasoline on which a refund may be claimed. The application for permit shall contain the applicant's name, address, place or places of business in the state of Mon-



tana, and other information which may be required by the board. Permits issued shall bear a permit number and the date of issuance. The board shall keep a record of all permits issued, canceled, or suspended. Permits shall be issued for the calendar year upon payment of a fee of one dollar (\$1) and must be renewed annually before the first day of January.

Any person failing to comply with this subsection shall be subject to a fine of not less than twenty-five dollars (\$25) or more than two hundred dollars (\$200) or imprisonment in the county jail for a period not less than ten (10) days or more than sixty (60) days, or both fine and imprisonment.

**History:** En. Sec. 11, Ch. 369, L. 1969; amd. Sec. 2, Ch. 13, L. 1971; amd. Sec. 7, Ch. 204, L. 1971; amd. Sec. 1, Ch. 400, L. 1971.

#### Compiler's Notes

This section was amended three times in 1971, once by Ch. 13, once by Ch. 204 and once by Ch. 400. Chapter 13 was approved by the governor and became effective February 2, 1971. Chapter 204 was approved on March 3, 1971, and Ch. 400 on March 18, 1971. Chapters 13 and 204 may conflict with respect to refund of tax on aviation gasoline; if so, Ch. 204, being later in time of approval, governs. The compiler has made a composite section embodying the changes made by all three amendments. However, the language added to the first paragraph of subsection (1) by Ch. 13 has been enclosed in brackets because of the possibility that it may have been superseded or may be superfluous in the light of Ch. 204.

#### Amendments

Chapter 13, Laws of 1971, added at the end of the first paragraph of subsection (1) the language enclosed in brackets.

Chapter 204, Laws of 1971, deleted "airplanes or aircraft" from the first sentence of the first paragraph of subsection

(1); and deleted from the end of the first paragraph of subsection (1) a clause reading "and no refund shall be allowed on any sale with respect to which an aviation gasoline tax exemption certificate has been issued."

Chapter 400, Laws of 1971, inserted "the total amount of gasoline purchased" in the first sentence of the third paragraph of subsection (1); deleted "and the reason" following "gasoline on which a refund is claimed" in the first sentence of the third paragraph of subsection (1); added the proviso to the second sentence of the third paragraph of subsection (1); inserted the third and fourth sentences in the third paragraph of subsection (1); deleted from the third paragraph of subsection (1) a sentence reading: "Each separate delivery shall constitute a purchase"; extended the time for filing applications, as set forth in the first sentence of subsection (2) from 13 to 14 months after the date of purchase or tax payment; and made minor changes in phraseology and punctuation.

#### Effective Date

Section 3 of Ch. 13, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 2, 1971.

### DECISIONS UNDER FORMER LAW

#### Motorboat Fuel

Under prior law which did not provide for tax refund for gasoline used in motorboats, one who consumed gasoline in motorboat in off-highway use was not entitled to refund on basis of due process and equal

protection clauses of constitution, since dealer, rather than the consumer, is the taxpayer, and since consumer, as a boat user, was not proper party to represent all nonhighway users. *Harvey v. Blewett*, 151 M 427, 443 P 2d 902.

**84-1855.1. Unlawful use of aviation gasoline.** It shall be unlawful for any person to use aviation gasoline, or to sell such gasoline for use, in any motorized vehicle operated upon the public highways or streets of this state. Violation of this section shall be a misdemeanor subject to the penalties provided in section 84-1859, R. C. M. 1947.

**History:** En. Sec. 84-1855.1 by Sec. 8, Ch. 204, L. 1971.

#### Title of Act

An act providing simplified administrative procedures in the taxation of aviation

gasoline for allocation to the aeronautics commission by subjecting such gasoline to a one cent (1¢) per gallon tax rather than the present seven cents (7¢) and by allowing no deduction, refund, or exemption from the tax; deleting aviation gasoline from those provisions of the gasoline license tax laws which provide evaporation allowances and credit refunds; providing a definition of "aviation dealer"; providing a new section numbered 84-1855.1, R. C. M.

1947, imposing a penalty; amending sections 84-1846, 84-1847, 84-1849, 84-1851, 84-1853 and 84-1855, R. C. M. 1947; repealing section 84-1848, R. C. M. 1947, pertaining to aviation gasoline tax exemption certificates.

#### Repealing Clause

Section 3 of Ch. 204, Laws 1971 read "Section 84-1848, R. C. M. 1947, is hereby repealed in its entirety."

**84-1856. Timely mailing treated as timely filing and paying.** Any claim, statement, remittance, or other document which is transmitted to this state through the United States mail, shall be deemed filed and received by this state on the date shown by the post-office cancellation mark stamped upon the envelope or other appropriate wrapper containing it. Any claim, statement, remittance, or other document which is mailed but not received by this state or where received with a cancellation mark that is illegible, erroneous, or omitted, shall be deemed filed and received on the date mailed if the sender establishes by competent evidence that the claim, statement, remittance, or other document was deposited in the United States mail on or before the date due for filing. In cases of such nonreceipt of a claim, statement, remittance, or other document, the sender must file with the state a duplicate within thirty (30) days after written notification is given to the sender by the state of its nonreceipt of such claim, statement, remittance, or other document.

If any claim, statement, remittance, or other document is sent by United States registered mail, certified mail or certificate of mailing, a record authenticated by the United States post office of such registration, certification or certificate shall be considered competent evidence that the report, claim, tax return, statement, remittance or other document was mailed to the addressee, and the date of registration, certification or certificate shall be deemed the postmarked date.

If the date for filing any claim, statement, remittance, or other document falls upon a Saturday, Sunday or legal holiday, the filing shall be considered timely if done on the next business day.

**History:** En. Sec. 12, Ch. 369, L. 1969.

**84-1857. License and bond of gasoline distributors.** All gasoline distributors prior to the commencement of doing business shall file an application for a license with the state board of equalization on forms prescribed and furnished by the board setting forth the information as may be requested by the board. Each distributor shall at the same time file a corporate surety bond or such collateral security or indemnity as may be deemed sufficient by the state board of equalization, but in no case more than twice the estimated amount of gasoline taxes the distributor will pay to this state each month. Upon approval of the application, the state board of equalization shall issue to the distributor a nonassignable license which shall continue in force until surrendered or canceled.

**History:** En. Sec. 13, Ch. 369, L. 1969.

**84-1858. Penalties—delinquent payment—procedure in case of failure to file statement or pay tax—lien for tax.** Any license tax not paid within the time provided shall be delinquent and a penalty of ten per cent (10%) shall be added to the tax and the tax shall bear interest at the rate of one per cent (1%) per month from the date of delinquency until paid. Upon a showing of good cause by the distributor, the board may waive penalty.

If any distributor or other person subject to the payment of such license tax shall willfully fail, neglect, or refuse to make any statement required by this act, or shall willfully fail to make payment of such license tax within the time provided, the state board of equalization shall be authorized to revoke any license issued under this act. In addition, the board shall inform itself regarding the matters required to be in such statement and determine the amount of the license tax due the state from such distributor, and shall add thereto a penalty of twenty-five dollars (\$25) or ten per cent (10%) thereof, whichever is greater, together with interest at the rate of one per cent (1%) per month from the date such statements should have been made and said license tax paid. The state treasurer shall proceed to collect such license tax with penalties and interest. Upon the request of the state treasurer, the attorney general shall commence and prosecute to final determination in any court of competent jurisdiction an action to collect such license tax. All license taxes, penalties and interest due from any distributor under the provisions of this act, shall be a lien upon any and all property of such distributor or other person upon the filing by the state board of equalization of a copy of its statement, or a certified copy of any statement filed with the board, in the office of the county clerk of the county where the distributor's property is situated. The lien shall have precedence over any other claim, lien or demand filed or recorded thereafter. The lien may be enforced in the name of this state in the same manner as judgment liens are enforced. No action shall be maintained to enjoin the collection of all or any part of the license tax. When the amount due is paid in full before the entry of foreclosure decree, the state treasurer shall release the lien by filing in the office of the county clerk where the lien was filed, a written release. At any time prior to the payment of said taxes, penalty and interest, before the entry of foreclosure decree, the state treasurer may release from the operation of the lien a part of the distributor's property to enable the distributor to mortgage, sell or otherwise dispose of it in order to procure funds to pay taxes, penalty and interest, provided there remains, in the judgment of the state treasurer, sufficient property subject to the lien to ensure the payment of all the unpaid taxes, penalty and interest.

**History:** En. Sec. 14, Ch. 369, L. 1969.

**84-1859. Penalties.** Any distributor or other person, who fails, neglects, or refuses to make and file the statements required by this act in the manner or within the time provided, or who shall be delinquent in the payment of any license tax imposed by this act, or who shall make any false statement with reference to his business, or who shall make any



false statement on any claim for refund or who violates any provision of the act, shall, in addition to any other penalties imposed, be deemed guilty of a misdemeanor and upon conviction shall be fined in any amount not exceeding one thousand dollars (\$1,000) or imprisonment in the county jail for not to exceed six (6) months, or shall be punished by the imposition of both such fine and imprisonment.

**History:** En. Sec. 15, Ch. 369, L. 1969.

**84-1860. Statute of limitations.** Except in the case of a fraudulent return or of neglect, or refusal to make a return, every deficiency shall be assessed within three (3) years from the due date of the return or the date of filing the return, whichever period expires later.

**History:** En. Sec. 16, Ch. 369, L. 1969.

**84-1861. Rules and regulations to be established by state board.** The state board of equalization shall have the power, and it shall be its duty to adopt, publish and enforce the rules and regulations consistent with and necessary for carrying out the provisions of this act.

**History:** En. Sec. 17, Ch. 369, L. 1969.

**Separability Clause**

Section 18 of Ch. 369, Laws 1969 read "If any section, subsection, sentence or clause in the act shall, for any reason, be held unconstitutional or void, such decision shall not affect the validity or meaning of any other portion of this act."

pealed all acts and parts of acts in conflict therewith.

Section 20 of Ch. 369, Laws 1969 read "Sections 84-1801, 84-1801.1, 84-1802, 84-1802.1, 84-1803, 84-1803.1, 84-1804, 84-1805, 84-1805.1, 84-1806, 84-1807, 84-1808, 84-1809, 84-1810, 84-1811, 84-1813, 84-1814, 84-1818, 84-1818.1, 84-1819, 84-1820, 84-1821, 84-1822, 84-1823, 84-1828, and 84-1829, R. C. M. 1947, are repealed."

**Repealing Clauses**

Section 19 of Ch. 369, Laws 1969 re-

CHAPTER 19—LICENSE AND OTHER TAX PROCEEDS—HOW DISPOSED OF

**84-1901. Disposition of moneys from certain designated license, etc. taxes.**

**Compiler's Notes**

Sections 84-4916 and 84-4918, included in the reference to sections 84-4901 to 84-4935 in this section in the parent vol-

ume, were repealed by Sec. 15, Ch. 260, Laws 1955; section 4-316, included in the reference to sections 4-301 to 4-356, was repealed by Sec. 12, Ch. 166, Laws 1951.

CHAPTER 20—LICENSE TAXES—METALLIFEROUS MINES

**Section**

**84-2004. Amount of tax.**

**84-2002. (2344.2) Persons liable to pay license tax.**

**Cross-References**

Multistate tax compact, sec. 84-6701.

**84-2004. (2344.4) Amount of tax.** The annual license tax to be paid by such person engaged in or carrying on the business of working or operating any mine or mining property in this state from which gold, silver, copper, lead or any other metal or metals, precious or semiprecious gems or stones are produced, shall be for the production years commencing on or

after January 1, 1970 and for each production year thereafter, one dollar (\$1), together with an additional sum or amount computed on the gross value of product which may have been derived by such person from such business, work or operation within this state during the calendar year immediately preceding, at the following rates: the rate of tax shall be fifteen hundredths of one per cent (0.15 of 1%) of the first one hundred thousand dollars (\$100,000) of the gross value of the product, five hundred seventy-five thousandths of one per cent (0.575 of 1%) of the amount by which such gross value of product exceeds one hundred thousand dollars (\$100,000) and does not exceed two hundred and fifty thousand dollars (\$250,000); eighty-six hundredths of one per cent (0.86 of 1%) of the amount by which such gross value of product exceeds two hundred and fifty thousand dollars (\$250,000) and does not exceed four hundred thousand dollars (\$400,000); one and fifteen hundredths per cent (1.15%) of the amount by which the gross value of product exceeds four hundred thousand dollars (\$400,000) and does not exceed five hundred thousand dollars (\$500,000) and one and four hundred thirty-eight thousandths per cent (1.438%) of the amount by which the gross value of product exceeds five hundred thousand dollars (\$500,000).

**History:** En. Sec. 4, Initiative No. 28, 1925; amd. Sec. 1, Ch. 220, L. 1957; amd. Sec. 1, Ch. 176, L. 1959; amd. Sec. 1, Ch. 9, Ex. L. 1969; amd. Sec. 1, Ch. 392, L. 1971.

#### Amendments

The 1969 amendment added a proviso, applicable only to production years 1969 and 1970, which imposed a new tax of .15% on the first \$100,000 of production and increased the rates from .5% to .575% on production between \$100,000 and \$250,000, from .75% to .86% on production between \$250,000 and \$400,000, from 1% to 1.15% on production from \$400,000 to \$500,000, and from 1.25% to 1.438% on production over \$500,000.

The 1971 amendment made the 1969 rates permanent by inserting "for the production years commencing on or after January 1, 1970 and for each production year thereafter," by substituting the 1969 rates in the main portion of the section, and by deleting the proviso added by the 1969 amendment.

#### Effective Dates

Section 2 of Ch. 9, Ex. Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 19, 1969.

Section 2 of Ch. 392, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 15, 1971.

### CHAPTER 21—LICENSE TAXES—NATURAL GAS DISTRIBUTORS

#### Section

84-2102. Natural gas distributors' license tax—amount—standard for measurement of gas distributed—persons not contemplated by act.

**84-2102. (2408.2) Natural gas distributors' license tax—amount—standard for measurement of gas distributed—persons not contemplated by act.** Every person engaged in or carrying on the business of distributing to consumers within this state, natural gas, produced, or not produced within this state, or engaged in or carrying on the business of owning, controlling, managing, leasing or operating within this state, any system or plant for the distribution of natural gas, produced, or not produced within this state, to consumers within this state for the purpose of use outside this state, or engaged in or carrying on the business of owning, controlling, managing, leasing or operating within this state, any system

or plant for the distribution of natural gas, produced, or not produced within this state, to consumers within this state must, for the year beginning January 1, 1969, and each year thereafter when engaged in carrying on such business in this state, pay to the state treasurer for the exclusive use and benefit of the state of Montana, a license tax for engaging in and carrying on such business an amount equal to five hundred seventy-five thousandths (.575) of one (1) cent for each one thousand (1,000) cubic feet of such natural gas, produced within this state, or not produced within this state, and distributed by such person to consumers within this state, during such year, or conveyed through a pipeline to a point outside this state during such year, except in connection with the operating of natural gas wells from which the same was extracted or produced, or delivered by such person to any other person for sale; provided that the standard or base pressure to be used in the measurement of such gas so distributed for determining the amount of license tax imposed hereunder, shall be ten (10) ounces above an atmospheric pressure of fourteen (14) and four-tenths (4/10) pounds per square inch, and at a temperature of sixty (60) degrees Fahrenheit, regardless of the atmospheric pressure and temperature at the point of measurement, and all measurements of gas shall be reduced, by computation, to these standards no matter what may have been the pressure and temperature at which gas was actually produced or measured; provided, however, that nothing in this act shall be construed as requiring laborers, employees, hired or employed, by any person to work on or about, or in connection with any natural gas well property or business, to pay such license taxes, nor shall any work required to be done in prospecting, or in developing, or opening up any natural gas property or plant, be deemed to be carrying on of natural gas business, or engaging in the business of working or operating of a natural gas well or plant; provided further, that if during any such work of developing any natural gas property, any marketable natural gas shall be extracted or produced and sold, then the same shall be deemed the carrying on of a natural gas business of distributing to consumers.

**History:** En. Sec. 2, Ch. 180, L. 1933; amd. Sec. 1, Ch. 52, Ex. L. 1933; amd. Sec. 1, Ch. 205, L. 1957; amd. Sec. 1, Ch. 8, Ex. L. 1969; amd. Sec. 1, Ch. 325, L. 1971.

#### Amendments

The 1969 amendment inserted the following proviso: "provided, however, for the two taxable years commencing on or after January 1, 1969, the tax shall be computed at the rate of five hundred seventy-five thousandths (.575) of one cent for each one thousand (1,000) cubic feet of such natural gas, produced within this state, or not produced within this state, and distributed by such person to consumers within this state, during such year, or conveyed through a pipeline to a point outside this state during such year, except in connection with the operating of natural gas wells from which the same was ex-

tracted or produced, or delivered by such person to any other person for sale."

The 1971 amendment substituted "January 1, 1969" for "July 1, 1957"; increased the tax rate from  $\frac{1}{2}\text{¢}$  to .575¢ per thousand cubic feet; and deleted the proviso inserted by the 1969 amendment.

#### Effective Dates

Section 2 of Ch. 8, Ex. Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 19, 1969.

Section 2 of Ch. 325, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 15, 1971.

#### Cross-References

Multistate tax compact, sec. 84-6701.



## CHAPTER 22—LICENSE TAXES—OIL PRODUCERS

## Section

84-2202. Oil producers' license tax—amount—exceptions.

84-2209. Procedure to compute and collect tax in absence of statement.

**84-2202. (2398) Oil producers' license tax — amount — exceptions.**

Every person engaging in or carrying on the business of producing, within this state, petroleum, or other mineral or crude oil, or engaging in or carrying on the business of owning, controlling, managing, leasing or operating within this state any well or wells from which any merchantable or marketable petroleum or other mineral or crude oil is extracted or produced, sufficient in quantity to justify the marketing of the same, must, for the year beginning July 1, 1957, and each year thereafter, when engaged in or carrying on any such business in this state, pay to the state treasurer, for the exclusive use and benefit of the state of Montana, a license tax for engaging in and carrying on such business, computed at the following rates:

(a) Two and one-tenth per cent (2.1%) of the total gross value of that portion of all the petroleum and other mineral or crude oil produced by such person from each lease or unit in the calendar quarter not in excess of an amount obtained by multiplying the number of producing wells on such lease or unit by four hundred fifty (450) barrels.

(b) Two and sixty-five hundredths per cent (2.65%) of the total gross value of that portion of all the production of such person from each lease or unit in each calendar quarter in excess of four hundred fifty (450) barrels multiplied by the number of producing wells on such lease or unit; but in determining the amount of such tax there shall be excluded from consideration all petroleum, or other crude or mineral oil produced and used by such person during such year in connection with his operations in prospecting for, developing and producing such petroleum, crude or mineral oil; provided, however, that nothing in this act shall be construed as requiring laborers or employees, hired or employed by any person, to drill any oil well, or to work in or about any oil well, or prospect or explore for, or do any work for the purpose of developing any petroleum or other mineral or crude oil to pay such license tax, nor shall any work be done, or the drilling of any well or wells, for the purpose of prospecting or exploring for petroleum or other mineral or crude oils, or for the purpose of developing same, be deemed to be engaging in or carrying on of any such business; provided, further, that in the doing of any such work, or in the drilling of any oil well, or in such prospecting, exploring or development work, any merchantable or marketable petroleum or other mineral or crude oil in excess of the quantity required by such person for carrying on such operation shall be produced sufficient in quantity to justify the marketing of the same, then such work, drilling, prospecting, exploring or development work shall be deemed to be the engaging in and carrying on of such business within this state within the meaning of this section.

(c) Every person required to pay such tax hereunder shall pay the same in full for his own account and for the account of each of the other

owner or owners of the gross proceeds in value or in kind of all the marketable petroleum or other mineral or crude oil extracted and produced, including owner or owners of working interest, royalty interest, overriding royalty interest, carried working interest, net proceeds interest, production payments and all other interest or interests owned or carved out of the total gross proceeds in value or in kind of such extracted marketable petroleum or other mineral or crude oil; in all leases establishing royalty interests entered into hereafter or in renewals of existing leases, or in division of proceeds orders, or by other contracts, such other owner or owners may agree with every person required to pay such tax that such other owner or owners will pay their prorata share of said tax, and that said prorata share may be deducted from any settlements under said lease or leases or division of proceeds orders or other contracts.

**History:** En. Sec. 2, Ch. 266, L. 1921; re-en. Sec. 2398, R. C. M. 1921; amd. Sec. 1, Ch. 67, L. 1923; amd. Sec. 1, Ch. 221, L. 1957; amd. Sec. 1, Ch. 172, L. 1959; amd. Sec. 1, Ch. 359, L. 1969.

**Amendments**

The 1969 amendment substituted "two and one-tenths per cent (2.1%)" for "two per cent" in subdivision (a) and "two and sixty-five hundredths per cent (2.65%)"

for "two and one-half per cent" in subdivision (b); and added subdivision (c).

**Effective Date**

Section 2 of Ch. 359, Laws 1969 read "This act is effective for all taxable years commencing after December 31, 1968."

**Cross-References**

Multistate tax compact, sec. 84-6701.

**84-2209. (2405) Procedure to compute and collect tax in absence of statement.** If any such person shall fail, neglect or refuse to file any statement required by section 84-2207, within the time therein required, the state board of equalization shall, immediately after such time has expired, proceed to inform itself, as best it may, regarding the number of barrels of petroleum and other mineral or crude oil extracted and produced by such person in this state during such quarter, and during each month thereof, and the average value thereof during each such month, and shall determine and fix the amount of the license taxes due to the state from such person for such quarter and shall make out a statement, in duplicate, showing the same, and shall add to the amount of such license taxes a penalty of twenty-five per cent thereof, and deliver one of such statements to the state treasurer, who shall proceed to collect the amount of such license taxes, with the penalty added thereto and interest on the whole thereof at the rate of twelve per cent, per annum from the date of the making of such statement by the state board of equalization until paid. Upon request of the state treasurer, it shall be the duty of the attorney general to commence and prosecute to final determination in any court of competent jurisdiction, an action at law to collect the same. The twenty-five per cent penalty herein provided may be waived by the state board of equalization if reasonable cause for the failure and neglect to file the statement required by section 84-2207 is provided to the said board.

**History:** En. Sec. 9, Ch. 266, L. 1921; re-en. Sec. 2405, R. C. M. 1921; amd. Sec. 8, Ch. 67, L. 1923; amd. Sec. 1, Ch. 328, L. 1969.

**Amendments**

The 1969 amendment added the last sentence.

## CHAPTER 23—LICENSE TAXES—SLEEPING CAR COMPANIES

**84-2306. (2315.6) License tax—amount—levy—notice—payment.****Cross-References**

Multistate tax compact, sec. 84-6701.

## CHAPTER 24—LICENSE TAXES—STORE LICENSE

## Section

84-2402. Application and fee for license.

84-2404. Expiration and renewal of licenses.

84-2410. "Store" defined.

84-2412. Employment of help—disposal of license money.

**84-2401. Store license from board of equalization required.****Cross-References**

Multistate tax compact, sec. 84-6701.

**84-2402. Application and fee for license.** Any person, firm, corporation, association, copartnership or group desiring to open, establish, operate or maintain a store in the state of Montana prior to September first of that calendar year shall apply to the state board of equalization for license to do so. The application shall be made upon a form which shall be prescribed and furnished by the state board of equalization, and shall set forth the name of the owner, manager, trustee, lessee, stockholders, receiver or other persons desiring said license; the name of such store; the location, including street number; and all such other facts as the state board of equalization may require.

If the applicant desires to open, establish, operate or maintain more than one such store, he shall make a separate application for a license to operate, maintain, open or establish each such store.

Each such application shall be accompanied by the license fee as prescribed in sections 84-2405, 84-2406 and 84-2407.

**History:** En. Sec. 2, Ch. 163, L. 1939; amd. Sec. 1, Ch. 122, L. 1955; amd. Sec. 9, Ch. 121, L. 1965; amd. Sec. 1, Ch. 160, L. 1971.

**Amendments**

The 1971 amendment deleted from the end of the second paragraph a clause reading "but the respective stores for which the applicant desires to secure licenses may all be listed upon one (1) application blank."

**84-2404. Expiration and renewal of licenses.** All licenses shall be so issued so as to expire upon the thirty-first day of December of each calendar year. On or before the thirty-first day of December of each calendar year, every firm, person, corporation, association, copartnership having a license, shall apply to the state board of equalization for a renewal license for the calendar year next ensuing. All applications for a renewal shall be made upon forms which shall be prescribed and furnished by the state board of equalization.

Each such application for a renewal license shall be accompanied by the license fee as prescribed in sections 84-2405, 84-2406 and 84-2407.



All licenses shall lapse on the thirty-first day of December of the year for which the license was issued, and if, by such thirty-first day of December, an application for a renewal license for the calendar year next ensuing has not been made, the fee charged shall be double the rate prescribed in sections 84-2405, 84-2406 and 84-2407.

**History:** En. Sec. 4, Ch. 163, L. 1939; amd. Sec. 2, Ch. 122, L. 1955; amd. Sec. 10, Ch. 121, L. 1965; amd. Sec. 2, Ch. 160, L. 1971.

**Amendments**

The 1971 amendment substituted "thirty-first day of December of each calendar year" in the second sentence of the first paragraph for "first day of January of

each year"; substituted "All licenses shall lapse on the thirty-first day of December of the year" at the beginning of the third paragraph for "No license shall lapse prior to the first day of March next following the year"; changed the application date specified in the third paragraph from March 1 to December 31; and inserted "for the calendar year next ensuing" in the third paragraph.

**84-2410. "Store" defined.** The term "store" as used in this act shall be construed to mean and include any store or stores or any mercantile establishment or establishments which are owned, operated, maintained or controlled by the same person, firm, corporation, association, copartnership, or group, either domestic or foreign, in which goods, wares or merchandise of any kind are sold, either at retail or wholesale; and subject to the classification contained in sections 84-2405, 84-2406 and 84-2407. Vending machines shall not be considered as places of business per se and are not required to be licensed under the provisions of this act.

**History:** En. Sec. 10, Ch. 163, L. 1939; amd. Sec. 3, Ch. 160, L. 1971.

**Amendments**

The 1971 amendment added the second sentence.

**84-2412. Employment of help—disposal of license money.** The state board of equalization is hereby authorized to employ such clerical and field assistance as may be found necessary to carry out and to administer the provisions of this act. All money collected under the provisions of this act shall be paid into the state treasury, to the credit of the general fund.

**History:** En. Sec. 12, Ch. 163, L. 1939; amd. Sec. 1, Ch. 266, L. 1971.

**Amendments**

The 1971 amendment deleted "less the expenses incurred in the administration of this act" after "of this act" in the second sentence.

CHAPTER 25—LICENSE TAXES—TELEGRAPH COMPANIES

**84-2501. (2355.1) Telegraph license tax, etc.**

**Cross-References**

Multistate tax compact, sec. 84-6701.

CHAPTER 26—LICENSE TAXES—TELEPHONE COMPANIES

**Section**

84-2601. Annual tax levied on gross income of telephone business.

84-2602. Statement and payment on gross income—certain business excluded.

**84-2601. Annual tax levied on gross income of telephone business.** That on and after the first day of April, 1969, there is hereby levied and shall be collected an annual tax of one and seven hundred twenty-five thousandths per cent (1.725%) of the gross income, in excess of two hundred fifty dollars (\$250) quarterly, derived from any telephone business within this state including the transmission of telephone messages in this state, over telephone lines or by microwave electronic equipment, in this state owned by any person, association or corporation; provided, however, that no bill, statement or account rendered or given any customer shall set out or contain, as a separate item, any amount on account or by reason of the license tax imposed by this act. Such annual license tax shall be paid in quarterly installments for the quarters ending respectively March 31, June 30, September 30, and December 31, in each year.

**History:** En. Sec. 1, Ch. 94, L. 1937; amd. Sec. 1, Ch. 41, L. 1947; amd. Sec. 1, Ch. 213, L. 1957; amd. Sec. 1, Ch. 7, Ex. L. 1969; amd. Sec. 1, Ch. 326, L. 1971.

#### Amendments

The 1969 amendment inserted a proviso increasing the rate of tax from  $1\frac{1}{2}\%$  to 1.725% for the two taxable years commencing on or after April 1, 1969.

The 1971 amendment made the 1969 increase permanent by substituting "1969" for "1957," changing the rates in the body of the section and deleting the proviso inserted by the 1969 amendment; and inserted "or by microwave electronic equipment."

#### Cross-References

Multistate tax compact, sec. 84-6701.

**84-2602. Statement and payment on gross income—certain business excluded.** Each and every person, association or corporation liable to tax under this act engaged in carrying on such telephone business in this state shall, within sixty (60) days after the end of each quarter, beginning with the quarter ending June 30, 1969, make out in duplicate and file with the state board of equalization, under oath, a statement in such form as the state board of equalization may require and prescribe, showing the total gross income of such person, association or corporation derived from the telephone business within this state including the transmission of telephone messages originating and terminating within this state, but excluding therefrom the gross income derived from the transmission of telephone messages passing through this state but both originating and terminating outside of this state and from those originating outside of, but terminating within this state and from those originating within but terminating outside of this state during the preceding quarter, and containing such other information as the state board of equalization may require; and shall accompany such statement with the payment to the state board of equalization of a license tax in the amount equal to one and seven hundred twenty-five thousandths per cent (1.725%).

**History:** En. Sec. 2, Ch. 94, L. 1937; amd. Sec. 2, Ch. 213, L. 1957; amd. Sec. 2, Ch. 7, Ex. L. 1969; amd. Sec. 2, Ch. 326, L. 1971.

#### Amendments

The 1969 amendment substituted "June 30, 1969" for "September 30, 1957" and

added a proviso increasing the rate from  $1\frac{1}{2}\%$  to 1.725% for the two taxable years commencing on or after April 1, 1969.

The 1971 amendment made the 1969 increase permanent by substituting the 1969 tax rate in the body of the section and deleting the proviso added in 1969, and corrected a typographical error.

**Effective Dates**

Section 3 of Ch. 7, Ex. Laws 1969 provided the act should be in effect from and

after its passage and approval. Approved March 19, 1969.

Section 3 of Ch. 326, Laws 1971 read "This act is effective on April 1, 1971."

CHAPTER 30—LICENSES—ITINERANT MERCHANTS

**84-3006. Application for license—fee.**

**Cross-References**

Multistate tax compact, sec. 84-6701.

CHAPTER 31—LICENSES—ITINERANT VENDORS

**84-3101. (2429) License of itinerant vendor of drugs, etc.**

**Cross-References**

Multistate tax compact, sec. 84-6701.

CHAPTER 32—LICENSES—MISCELLANEOUS COUNTY

**84-3201. (2434) Billiard tables—pawnbrokers—theaters, etc.**

**Cross-References**

Multistate tax compact, sec. 84-6701.

**84-3202. (2435) Railways acting as warehouses.**

**Cross-References**

Multistate tax compact, sec. 84-6701.

**84-3203. (2436) License of manufacturer of soft drinks.**

**Cross-References**

Multistate tax compact, sec. 84-6701.

**84-3204. (2438) Keeper of skating rink or merry-go-round.**

**Cross-References**

Multistate tax compact, sec. 84-6701.

**84-3205. (2439) Moving picture shows—amount of license.**

**Cross-References**

Multistate tax compact, sec. 84-6701.

**84-3207. (2441) Architects, builders, contractors, manufacturers.**

**Cross-References**

Multistate tax compact, sec. 84-6701.

**84-3208. (2442) Manufacturers of malt.**

**Cross-References**

Multistate tax compact, sec. 84-6701.

CHAPTER 34—LICENSES—PRODUCE WHOLESALERS

**84-3402. (2443.2) Produce wholesalers' license—who shall pay.**

**Cross-References**

Multistate tax compact, sec. 84-6701.



## CHAPTER 35—LICENSES—PUBLIC CONTRACTORS

## Section

- 84-3501. **Definitions.**  
 84-3505. Classes of licenses—rights granted under licenses—fees.  
 84-3507. Bids to show bidder is licensed, is not presently working overtime on any incomplete contract, and class of bid.  
 84-3508. Disposal of fees.  
 84-3510. Complaints against licensee—grounds—investigation—hearing—suspension of license—appeals.  
 84-3513. Retention of contract payments to pay assessments—transmittal to board of equalization—contractor to pay when funds not retained—refunds.  
 84-3514. Corporate license tax credit—additional license fees—treatment of personal property tax as credit.  
 84-3515. State board of equalization to establish rules and regulations.  
 84-3516. Failure to file contractor's license—penalty.

**84-3501. (2433.1) Definitions.** The following words, terms and phrases in this act are, for the purposes hereof, defined as follows:

(a). \* \* \* [Same as parent volume.]

(b) A "public contractor" within the meaning of this act shall include any person who submits a proposal to or enters into a contract for performing all public construction work in the state, with the federal government, state of Montana, or with any board, commission or department thereof, or with any board of county commissioners, or with any city or town council, or with any agency of any thereof, or with any other public board, body, commission or agency, authorized to let or award contracts for any public work when the contract cost, value or price thereof exceeds the sum of one thousand dollars (\$1,000).

(c). \* \* \* [Same as parent volume.]

(d) "Gross receipts" means all receipts from sources within the state whether in the form of money, credits or other valuable consideration, received from, engaging in or conducting a business, without deduction on account of the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, taxes, losses or any other expense whatsoever. However, "gross receipts" shall not include cash discounts allowed and taken on sales and sales refunds, either in cash or by credit, uncollectible accounts written off from time to time, and payments received in final liquidation of accounts included in the gross receipts of any previous return made by the person.

**History:** En. Sec. 1, Ch. 178, L. 1935; amd. Sec. 1, Ch. 195, L. 1967.

**Amendments**

The 1967 amendment in subsection (b) inserted "for performing all public con-

struction work in the state" after "into a contract"; inserted "federal government" before "state of Montana"; deleted "the construction or reconstruction" after "award contracts for"; and added subsection (d).

**84-3505. (2433.5) Classes of licenses—rights granted under licenses—fees.** (1) There shall be three (3) classes of licenses issued under the provisions of this act; and such classes of licenses are hereby designated as Classes A, B, and C. Any applicant for a license under the provisions hereof, shall specify in his application the class of license applied for.

(2) The holder of a Class A license shall be entitled to engage in the public contracting business within the state of Montana without any

limitation as to the value of a single public contract project, subject, however, to such prequalification requirements as may be imposed by the public body or bodies referred to in section 84-3501 (b) and at the time of making the application for such license the applicant shall pay to the registrar a fee in the sum of two hundred dollars (\$200).

(3) The holder of a Class B license shall be entitled to engage in the public contracting business within the state of Montana, but shall not be entitled to engage in the construction of any single public contract project of a value in excess of fifty thousand dollars (\$50,000); and shall pay unto the registrar as a license fee the sum of one hundred dollars (\$100) for such Class B license at the time of making application therefor.

(4) The holder of a Class C license shall be entitled to engage in the public contracting business within the state of Montana, but shall not be entitled to engage in the construction of any single public contract project of a value in excess of twenty-five thousand dollars (\$25,000); and shall pay unto the registrar as a license fee the sum of ten dollars (\$10) at the time of making application therefor.

(5) In addition to the fees enumerated above, each public contractor shall pay to the state an additional license fee in a sum equal to one per cent (1%) of the gross receipts from public contracts during the income year for which the license is issued; provided, however, that the additional license fee hereby imposed shall not be paid upon or collectible from the gross receipts from any public contract which has been let to bid, upon which bids have been awarded, or which has been executed by a public body and a public contractor on the effective date of this act.

(6) Nothing herein shall require any contractor to pay any license fee on any public contract project of a value less than one thousand dollars (\$1,000), nor shall any contractor be required to have a license hereunder in order to submit a bid or proposal for contracts advertised to be let by the Montana highway commission where federal aid is obtained from the bureau of public roads or the department of agriculture of the United States; neither shall a successful bidder be required to be licensed as provided herein before the awarding and execution of any contract to be let by the state highway commission where federal aid from the bureau of public roads or the department of agriculture of the United States is involved.

**History:** En. Sec. 5, Ch. 178, L. 1935; amd. Sec. 1, Ch. 113, L. 1939; amd. Sec. 2, Ch. 195, L. 1967.

the present subsection (5) before the last paragraph of the old section, which is now numbered subsection (6).

**Amendments**

The 1967 amendment numbered the paragraphs in the old section, and inserted

**Cross-References**

Multistate tax compact, sec. 84-6701.

**84-3507. (2433.7) Bids to show bidder is licensed, is not presently working overtime on any incomplete contract, and class of bid.** All bids and proposals for the construction of any public contract project subject to the provisions of this act shall contain a statement showing that the bidder or contractor is duly and regularly licensed hereunder and is not presently working beyond the contract time, including authorized time extensions,

on any previously awarded public contract project. The number and class of such license then held by such public contractor shall appear upon such bid or proposal, and no contract shall be awarded to any contractor unless he is the holder of a license in the class within which the value of the project shall fall as hereinbefore provided, and unless the public contractor has completely executed any previous contract upon which he has worked beyond contract time.

**History:** En. Sec. 7, Ch. 178, L. 1935; amd. Sec. 3, Ch. 141, L. 1967.

#### Amendments

The 1967 amendment added "and is not presently working \* \* \* on any previous-

ly awarded public contract project" at the end of the first sentence and added "and unless \* \* \* he has worked beyond contract time" at the end of the second sentence.

**84-3508. (2433.8) Disposal of fees.** All moneys collected hereunder shall be deposited by the registrar with the state treasurer, who shall credit them to the general fund of the state.

**History:** En. Sec. 8, Ch. 178, L. 1935; amd. Sec. 2, Ch. 266, L. 1971.

#### Amendments

The 1971 amendment deleted the former

first sentence requiring expenses to be paid from fees; and deleted "less the expense incurred in the administration of this act" after "collected hereunder."

**84-3510. (2433.10) Complaints against licensee—grounds—investigation—hearing—suspension of license—appeals.** Any person, firm, copartnership, corporation, association or other organization may file a duly verified complaint with the registrar charging that the licensee is guilty of one or more of the following acts or omissions:

(1) to (3). \* \* \* [Same as parent volume.]

(4) The making of any false statement in any application for a license or renewal thereof;

(5) The failure to comply with the provisions of section 82-1926 requiring preference of products manufactured or produced in this state by Montana industry and labor.

Upon the filing of such complaint the registrar shall investigate the charge and within sixty days after the filing of such complaint shall render and file said registrar's decision with said registrar's reasons therefor. If the registrar's decision be that the licensee has been guilty of any of such acts or omissions, said registrar shall suspend the contractor's license. At any time within twenty days thereafter the complainant or the contractor may petition the registrar for a rehearing. In the order granting or denying such rehearing the registrar shall set forth a statement of the particular grounds and reasons for said registrar's actions on such petition and shall mail a copy of such order to the parties who have appeared in support of or in opposition to the petition for rehearing. If a rehearing be granted, the registrar shall set the matter for further hearing on due notice to the parties, and within thirty days after submission of the matter, serve said registrar's decision after rehearing in like manner as an original decision.

The filing of such petition for rehearing as to the registrar's actions in suspending or canceling such license shall suspend the operation of



such action and permit the licensee to continue to do business as a public contractor pending final determination of the controversy.

Within thirty days after the decision on rehearing, any party aggrieved by such decision of the registrar may appeal therefrom to the district court in and for the county in which the licensee under this act resides or does business as a public contractor, by serving upon the registrar a notice of such appeal. The matter shall thereupon be heard de novo by the district court. An appeal may be taken from the decision of the district court in the same manner as appeals in other civil cases.

In all cases where the licensee has filed his notice of appeal from the decision of the registrar or from the decision of the district court, such licensee shall be entitled to continue to do business as a public contractor pending final decision of the controversy.

**History:** En. Sec. 10, Ch. 178, L. 1935;  
amd. Sec. 1, Ch. 219, L. 1969.

**Amendments**

The 1969 amendment inserted item (5).

**84-3513. Retention of contract payments to pay assessments—transmittal to board of equalization—contractor to pay when funds not retained—refunds.** The state, county, city or any agency or department thereof, as described in section 84-3501 (b), for whom the contractor is performing public work, shall withhold, in addition to other amounts withheld as provided by law, one per cent (1%) of all payments due the contractor and shall transmit such moneys to the state board of equalization. In the event that the one per cent (1%) of gross receipts is not withheld as provided, the contractor shall make payment of these amounts to the state board of equalization within thirty (30) days after the date on which the contractor receives each increment of payment for work performed by the contractor. Any overpayment of the one per cent (1%) of gross receipts withheld, or paid by any contractor hereunder, shall be refunded by the state board of equalization at the end of the income year upon written application therefor.

**History:** En. Sec. 3, Ch. 195, L. 1967.

**Title of Act**

An act providing for additional public contractors' license fees for all public construction work in Montana, defining terms, prescribing method of collection and disposition of fees, allowing a credit on

corporation or income tax and personal property taxes paid in Montana by licensees on personal property used in licensees' contracting business, providing a penalty and an effective date; amending sections 84-3501 and 84-3505, R. C. M. 1947.

**84-3514. Corporate license tax credit—additional license fees—treatment of personal property tax as credit.** The additional license fees withheld or otherwise paid as provided herein may be used as a credit on the contractor's corporation license tax provided for in Title 84, chapter 15, R.C.M. 1947, or on the contractor's income tax provided for in Title 84, chapter 49, R.C.M. 1947, depending upon the type of tax the contractor is required to pay under the laws of the state.

Personal property taxes paid in Montana on any personal property of the contractor which is used in the business of the contractor and is located within this state may be credited against the license fees required

under this act. However, in computing the tax credit allowed by this act against the contractor's corporation license tax or income tax, the personal property tax credit against the licensee fees herein required shall not be considered as license fees paid for the purpose of such income tax or corporation license tax credit.

**History:** En. Sec. 4, Ch. 195, L. 1967.

**84-3515. State board of equalization to establish rules and regulations.** The state board of equalization shall establish rules and regulations necessary for the effective implementation of the provisions of this act, including, but not limited to, requiring public contractors to file a contractor's return showing public works contracts performed during a calendar year.

**History:** En. Sec. 5, Ch. 195, L. 1967.

**84-3516. Failure to file contractor's license—penalty.** A person failing to file a contractor's license return as provided and required by the state board of equalization, upon conviction, shall be fined not less than one thousand dollars (\$1,000) or more than ten thousand dollars (\$10,000).

**History:** En. Sec. 6, Ch. 195, L. 1967. the act should be in effect from and after its passage and approval. Approved February 28, 1967.

**Effective Date**

Section 7 of Ch. 195, Laws 1967 provided

#### CHAPTER 37—LICENSES—TRANSIENT RETAIL MERCHANTS

##### **84-3702. (2429.2) Amount of license.**

**Cross-References**

Multistate tax compact, sec. 84-6701.

#### CHAPTER 38—LEVY OF TAXES

**Section**

**84-3804. Increase of state tax levy—support units of university.**

##### **84-3801. (2147) The levy.**

**Cross-References**

Multistate tax compact, sec. 84-6701.

**84-3804. Increase of state tax levy — support units of university.** Upon the approval of the electors of this state, to be determined by their vote at the general election to be held in November of 1968, the legislative assembly shall levy a property tax, in addition to any levy authorized by section 9, article XII of the Montana constitution, of not more than six (6) mills on the taxable value of all real and personal property each year for ten (10) years beginning with the year 1969. All revenue from this property tax levy shall be appropriated for the support, maintenance, and improvement of the Montana university system.

**History.** En. Sec. 1, Ch. 50, L. 1967.  
Referendum No. 65, approved at election  
Nov. 5, 1968.

**Compiler's Notes**

This section is substituted for Sec. 1, Ch. 218, Laws 1957 and given the same section number as it covers the same subject matter.

## CHAPTER 39—UNIFORM FEDERAL TAX LIEN REGISTRATION ACT

(Repealed—Section 8, Chapter 228, Laws of 1967)

**84-3901 to 84-3907. (2155.1 to 2155.7) Repealed.****Repeal**

These sections (Secs. 1 to 7, Ch. 8, L. 1927), the Uniform Federal Tax Lien

Registration Act, were repealed by Sec. 8, Ch. 228, Laws 1967. For present law see secs. 45-1501 to 45-1507.

## CHAPTER 41—COLLECTION OF GENERAL PROPERTY TAXES—TAX SALES—REDEMPTION—TAX DEEDS—SALE OF TAX DEED LANDS

**Section****84-4130. Lien of state when vests in purchaser—how alone divested.****84-4191. Terms of sale—sale contract—deed of conveyance.**

**84-4130. (2197) Lien of state when vests in purchaser—how alone divested.** On filing the certificate with the county clerk, the lien of the state vests in the purchaser, and is only divested by the payment to him or to the county treasurer for his use of the purchase money and two-thirds (2/3) of one per cent additional for each month that elapses from the date of the sale until redeemed.

**History:** En. Sec. 121, p. 112, L. 1891; re-en. Sec. 3888, Pol. C. 1895; re-en. Sec. 2644, Rev. C. 1907; re-en. Sec. 2197, R. C. M. 1921; amd. Sec. 1, Ch. 8, L. 1967.

of tax sale to retain a lien upon the real estate for the amount of certificates after sheriff's sale. *Stallings v. Erwin*, 148 M 227, 419 P 2d 480, 483.

**Amendments**

The 1967 amendment inserted "two-thirds (2/3) of" preceding "one per cent additional."

Where, subsequent to purchase of tax certificates, mortgagee foreclosed the mortgage, the foreclosure sale cut off any lien asserted by mortgagee for taxes paid although the mortgage permitted the mortgagee to pay taxes and collect the same upon foreclosure. *Stallings v. Erwin*, 148 M 227, 419 P 2d 480, 483.

**Extent of Lien**

This section does not permit mortgagee who had previously purchased certificates

**84-4132. (2201) Time for redemption.****References**

*United States v. Johnston*, 247 F Supp 707.

**84-4133. (2202) Redemption to be made in lawful money, etc.****Check as "Lawful Money"**

Use of a check by the small business administration in the redemption of tax delinquent property by the United States constituted "lawful money" under this

section and certificate of redemption issued to the government four days before defendant filed application for tax deed was valid. *United States v. Johnston*, 247 F Supp 707.

**84-4154. (2210) Redemption from tax sales.****References**

*United States v. Johnston*, 247 F Supp 707.

**84-4191. Terms of sale—sale contract—deed of conveyance.** Such sale shall be made for cash or, in the case of real property, on such terms as the board of county commissioners may approve; provided, however, that if



such sale is made on terms at least twenty per cent (20%) of the purchase price shall be paid in cash at the date of sale and the remainder may be paid in installments extending over a period not to exceed five (5) years and all such deferred payments shall bear interest at the rate of eight per cent (8%) per annum.

If a sale is made on terms, the chairman of the board of county commissioners shall execute a contract containing such terms as shall be provided by a uniform contract prescribed by the board of equalization and upon payment of the purchase price in full together with all interest which may become due on any installment or deferred payments, the chairman of the board of county commissioners shall execute a deed attested to by the county clerk to the purchaser, or his assigns, or such other instruments as shall be sufficient to convey all of the title of the county in and to the property so sold, provided that the county may in the discretion of the board of county commissioners reserve not to exceed six and one-fourth per cent (6- $\frac{1}{4}$ %) royalty interest in the oil, gas, other hydrocarbons and minerals produced and saved from said land.

**History:** En. Sec. 2, Ch. 171, L. 1941; amd. Sec. 1, Ch. 187, L. 1949; amd. Sec. 1, Ch. 163, L. 1969.

#### Amendments

The 1969 amendment increased the deferred payment interest rate from "four per cent (4%)" per annum to "eight per cent (8%)."

#### Effective Date

Section 2 of Ch. 163, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 28, 1969.

#### Mineral Rights Reservation

County has implied power under proviso of this section to make mineral reservation in deeds to tax-title lands sold by it. *Smith v. County of Musselshell*, — M —, 472 P 2d 878.

In action to determine rights under deed, evidence that all parties to county's deed regarded reservation in deed as royalty interest and not mineral interest and language in deeds that "all minerals contained in and hereafter mined, produced, extracted, or otherwise taken" supported finding that such reservation was royalty interest. *Superior Oil Co. v. Vanderhoof*, 307 F Supp 84.

### 84-4196. Confirmation of oil and gas leases heretofore made.

#### Reservation of Royalty Interest

In action to determine rights under deed, evidence that all parties to county's deed regarded reservation in deed as royalty interest and not mineral interest and language in deeds that "all minerals con-

tained in and hereafter mined, produced, extracted, or otherwise taken" supported finding that such reservation was royalty interest. *Superior Oil Co. v. Vanderhoof*, 307 F Supp 84.

## CHAPTER 44—SETTLEMENT WITH STATE AUDITOR AND TREASURER

### 84-4403 to 84-4405. (2265 to 2267) Repealed.

#### Repeal

These sections (Secs. 4000 to 4002, Pol. C. 1895), relating to examination of tax

collectors' books, were repealed by Sec. 23, Ch. 249, Laws 1967.

## CHAPTER 46—BANKS—TAXATION

#### Section

84-4606. Banks with offices in more than one county—assessment and apportionment of tax.

**84-4606. Banks with offices in more than one county—assessment and apportionment of tax.** Any state or national bank, banking corporation, or private bank, the stock, moneyed capital, or moneys and credits of which are subject to taxation under the provisions of chapter 3 and chapter 46, Title 84, Revised Codes of Montana, 1947, and which has banking offices in more than one (1) county, shall furnish to the assessor of each such county the information required of it by chapter 46, Title 84, Revised Codes of Montana, 1947, together with a statement of the book value of real estate owned and located in the respective counties and a statement of the deposit liability shown by the books of account of said bank at each of its said banking offices at the close of business the day next preceding the first Monday in March; and the aggregate tax on the stock, moneyed capital, and moneys and credits of such bank computed as provided by law shall be assessed by and be paid to the respective counties in the proportion which the amount of the deposit liability shown on the books of the office or offices of such bank located in such counties, respectively, shall bear to the total deposit liability of such bank.

**History:** En. Sec. 1, Ch. 72, L. 1967.

**Title of Act**

An act relating to the assessment for the purpose of taxation of bank stock, moneyed capital, and moneys and credits, in each county wherein a bank office is located and the payment of taxes thereon; providing for the furnishing of certain information to the county assessor of each such county by the bank officials and repealing all acts and parts of acts in conflict herewith.

**Repealing Clause**

Section 2 of Ch. 72, Laws 1967 repealed all acts and parts of acts in conflict therewith.

**Effective Date**

Section 3 of Ch. 72, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 20, 1967.

**CHAPTER 47—CITIES AND TOWNS—TAXATION AND LICENSE**

**Section**

- 84-4701. Limitation on amount of tax for municipal purposes—distribution of funds—levy for park, swimming pools, playgrounds, youth centers and other purposes.**
- 84-4701.1. All-purpose levy authorized.**
- 84-4701.2. Maximum rate of all-purpose levy.**
- 84-4701.3. Allocation of all-purpose levy.**
- 84-4701.5. Certification of all-purpose levy to county officers.**
- 84-4701.6. Extraordinary levies—additional to all-purpose levy.**

**84-4701. (5194) Limitation on amount of tax for municipal purposes—distribution of funds—levy for park, swimming pools, playgrounds, youth centers and other purposes.** The amount of taxes to be assessed and levied for general municipal or administrative purposes in cities and towns must not exceed two and four-tenths (2.4%) per centum on the per centum of the assessed value of the taxable property of the city or town; and the council or commission in each city or town may distribute the money collected into such funds as are prescribed by ordinance; provided, that for the purpose of procuring, equipping and maintaining public parks, swimming pools, skating rinks, playgrounds, civic centers, youth centers, museums and combinations thereof, the council or commission in any city

or town may assess and levy, in addition to the said levy for general municipal or administrative purposes, not exceeding seven (7) mills on the dollar on the per centum of the assessed value of the taxable property of the city or town.

**History:** Ap. p. Sec. 415, 5th Div. Comp. Stat. 1887; amd. Sec. 16, p. 185, L. 1889; amd. Sec. 4814, Pol. C. 1895; re-en. Sec. 3342, Rev. C. 1907; amd. Sec. 1, Ch. 103, L. 1911; amd. Sec. 1, Ch. 27, L. 1917; re-en. Sec. 5194, R. C. M. 1921; amd. Sec. 1, Ch. 156, L. 1923; amd. Sec. 1, Ch. 175, L. 1925; amd. Sec. 1, Ch. 48, L. 1937; amd. Sec. 4, Ch. 71, L. 1945; amd. Sec. 1, Ch. 192, L. 1951; amd. Sec. 1, Ch. 230, L. 1969. Cal. Pol. C. Sec. 4371.

#### Amendments

The 1969 amendment substituted "two and four-tenths (2.4%) per centum" for "two (2%) per centum" after "must not exceed" near the beginning of the section, and "seven (7) mills" for "six (6) mills" after "not exceeding" near the end of the section.

#### Cross-References

Multistate tax compact, sec. 84-6701.

**84-4701.1. All-purpose levy authorized.** It is the purpose of this act to authorize and empower the cities and towns of the state of Montana, at their option, to make an all-purpose annual mill levy in lieu of the multiple levies now authorized by the statutes of the state of Montana. The all-purpose mill levy shall not include the levies imposed for bonded indebtedness, to pay judgments, or special improvement district revolving funds of municipalities, which levies may be made in addition to the all-purpose levy as provided in section 84-4701.6, R. C. M., 1947. This act shall not be construed as repealing those statutes providing for multiple separate levies.

**History:** En. Sec. 1, Ch. 82, L. 1965; amd. Sec. 1, Ch. 226, L. 1969; amd. Sec. 1, Ch. 375, L. 1971.

#### Amendments

The 1969 amendment deleted "exclusive"

before "annual mill levy"; and inserted the second sentence.

The 1971 amendment inserted "or special improvement district revolving funds of municipalities" in the second sentence and made minor changes in phraseology.

**84-4701.2. Maximum rate of all-purpose levy.** Notwithstanding the provisions of the statutes of Montana to the contrary, the cities and towns of the state of Montana may make an all-purpose annual levy upon the assessed value of all the taxable property in such cities and towns, for municipal purposes in lieu of the multiple levies now authorized by statute. The total of such all-purpose levy shall not exceed sixty-five (65) mills on the dollar, which levy shall not include any levies necessary for bonded indebtedness, judgments, or special improvement district revolving in addition to all-purpose levy as provided in sections 84-4701.1 and 84-4701.6. The moneys received from such all-purpose levy shall be accounted for in a common fund known as the all-purpose general fund.

An amount not to exceed five per centum (5%) of the moneys received from and as a part of the all-purpose levy aforesaid may be placed in a separate fund known as the capital improvement program fund to be earmarked for the replacement and acquisition of property, plant or equipment costing in excess of five thousand dollars (\$5,000) with a life expectancy of five (5) years or more; provided that a capital improvement program has been formally adopted by city or town ordinance.

The moneys held in the capital improvement program fund shall, whenever possible, be invested in savings or time deposits in a state or



national bank insured by the federal deposit insurance corporation or in direct obligations of the United States government and credited back to the fund plus interest earned.

**History:** En. Sec. 2, Ch. 82, L. 1965; amd. Sec. 2, Ch. 226, L. 1969; amd. Sec. 2, Ch. 375, L. 1971.

#### Amendments

The 1969 amendment substituted "an all-purpose annual levy" for "an all-purpose and exclusive annual levy which does not exceed the average number of mills on the dollar levied for all purposes in the preceding three (3) years"; and added the second sentence.

The 1971 amendment substituted "all-purpose" for "multiple" in the second sentence of the first paragraph; increased the maximum levy specified in the second sentence of the first paragraph from 60 to 65 mills; inserted "or special improvement district revolving" in the second sentence of the first paragraph; added the last sentence to the first paragraph; added the second and third paragraphs; and made minor changes in phraseology.

**84-4701.3. Allocation of all-purpose levy.** In the event the all-purpose levy method, provided for in section 84-4701.2, is followed in municipal financing, any municipality following it shall appropriate the levy to the several departments of the municipality in its annual budget and appropriation ordinance, or in other legal manner, as the governing body of such municipality shall deem best.

**History:** En. Sec. 3, Ch. 82, L. 1965; amd. Sec. 3, Ch. 375, L. 1971.

#### Amendments

The 1971 amendment substituted "appropriate" for "allocate"; and deleted "on a mill basis" after "the levy."

**84-4701.5. Certification of all-purpose levy to county officers.** In the event that it is necessary to certify such a municipal levy to county officers for collection, the same shall be certified as an all-purpose levy.

**History:** En. Sec. 5, Ch. 82, L. 1965; amd. Sec. 4, Ch. 375, L. 1971.

#### Amendments

The 1971 amendment substituted "an all-purpose levy" for "a single levy for general fund purposes" at the end of the section.

**84-4701.6. Extraordinary levies—additional to all-purpose levy.** That otherwise authorized extraordinary levies to pay for bonded indebtedness, judgments, or special improvement district revolving funds may be made by such municipalities in addition to such all-purpose levy provided in sections 84-4701.1, 84-4701.2, 84-4701.3, 84-4701.4 and 84-4701.5 of the Revised Codes of Montana, 1947.

**History:** En. 84-4701.6 by Sec. 1, Ch. 145, L. 1967; amd. Sec. 5, Ch. 375, L. 1971.

#### Title of Act

An act to provide for authorized extraordinary levies to service and pay bonded indebtedness of such municipalities and to pay judgments obtained against them, may be made by such municipalities in addition to such all-purpose levy; and repealing all acts and parts of acts in conflict herewith.

#### Amendments

The 1971 amendment inserted "or special improvement district revolving funds" and made minor changes in phraseology.

#### Repealing Clause

Section 2 of Ch. 145, Laws 1967 repealed all acts and parts of acts in conflict therewith.

### 84-4712. (5200) Special taxes and assessments.

#### Compiler's Notes

Sections 44-301 to 44-303, referred to in

this section in the parent volume, were repealed by Sec. 12, Ch. 260, Laws 1967.

## CHAPTER 48—FREIGHT LINE COMPANIES—TAXATION

## Section

84-4819. Rate of tax—situs.

84-4820. Railroad companies to withhold tax, file statements annually and remit to state—receipts—investigations—ad valorem tax basis.

**84-4819. Rate of tax—situs.** Every such freight line company shall pay annually for each calendar year a sum in the nature of a tax in the amount of five and one-half per cent (5-½%) of the total gross earnings received from all sources by reason of the use or operation of such cars within this state by such freight line company, which shall be in lieu of all other taxes upon such property of any freight line company so paying the same; provided, for the purpose of taxation, all cars used exclusively within the state or used partially within and partially without the state, are hereby declared to have situs within the state, the value thereof for such taxation to be determined as provided for in this act.

**History:** En. Sec. 2, Ch. 137, L. 1949; **Cross-References**  
amd. Sec. 1, Ch. 346, L. 1969. Multistate tax compact, sec. 84-6701.

**Amendments**

The 1969 amendment raised the tax rate from "five per cent (5%)" to "five and one-half per cent (5½%)" per year.

**84-4820. Railroad companies to withhold tax, file statements annually and remit to state—receipts—investigations—ad valorem tax basis.** Every railroad company so using or leasing said cars, upon payment therefor to such company shall withhold from such payment five and one-half per cent (5-½%) of as much thereof as shall constitute gross earnings of such freight line company within this state. On or before March 1, 1970, such railroad company shall make and file with the board a consolidated statement in a form to be prescribed by the board, showing the amount of such payments for the next preceding calendar year ending December 31, 1969, and the amounts so withheld and due the state of Montana. A like report shall be made on or before March 1 of each year thereafter; provided, however, that for good cause the board may grant a reasonable extension for filing, but not to exceed thirty (30) days. Such railroad company at the time of filing such statement shall remit the amounts so withheld and due the state of Montana. Upon receipt of such payment, the board shall issue its receipt, in triplicate, one (1) copy of which shall be mailed to such railroad company, one (1) to the freight line company for which such tax is paid, and one (1) to be retained in the office of the state board of equalization. The mailing of such receipt to such freight line company shall constitute notice of the filing of said statement and payment of said tax. If any railroad company shall fail to make or file such report, or if the state board of equalization be dissatisfied with any report filed, the board shall have the power to conduct a hearing and investigation for the purpose of ascertaining from whatever sources to which it has access, the gross earnings of such freight line company from the use or operation of such cars within the borders of this state, and in conducting such hearing and investigation, the board shall have power, by subpoena, to require

officers, agents, employees or receivers of such railroad company, or of such freight line company, to attend before the state board of equalization, and to bring with him, or them, for inspection by the board, any books, papers, or documents in his or their possession, or under his or their control, in any manner affecting said tax, and to testify under oath concerning any matter relating to the organization or business of such freight line company within this state. Any person who shall fail, neglect or refuse to attend before the board, when subpoenaed so to do, or who shall fail, neglect, or refuse to bring with him and submit for inspection by the board any books, papers, or documents in his possession or under his control affecting the organization or business of such freight line company within this state, or who shall refuse to testify, or refuse to answer any question which may be asked him concerning the organization or business, shall be deemed guilty of a misdemeanor, and, upon conviction thereof shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000), or be imprisoned in the county jail for not less than thirty (30) days nor more than six (6) months. Every freight line company, as hereinbefore defined, shall be liable for the payment of the difference, if any, between five and one-half per cent ( $5\frac{1}{2}\%$ ) of all gross earnings in this state and the amounts withheld and remitted to the state of Montana by railroads, and shall be liable for the payment of any additional taxes which the board may find due under its authority to raise or lower the rate to conform to the taxes which would be payable if the cars were taxed on an ad valorem basis.

**History:** En. Sec. 3, Ch. 137, L. 1949; amd. Sec. 2, Ch. 346, L. 1969; amd. Sec. 1, Ch. 339, L. 1971.

The 1971 amendment added the proviso to the third sentence; and made minor changes in phraseology and style.

#### Amendments

The 1969 amendment substituted "five and one-half per cent ( $5\frac{1}{2}\%$ )" for "five per cent (5%)" in the first and last sentences; and in the second sentence, substituted "1970" for "1950" and "1969" for "1949."

#### Effective Dates

Section 3 of Ch. 346, Laws 1967 read "This act is effective for all taxable years commencing after December 31, 1968."

Section 2 of Ch. 339, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 15, 1971.

### CHAPTER 49—INCOME TAX

#### Section

- 84-4901. Income tax—definitions.
- 84-4902. Rate of income tax.
- 84-4902.1. Surtax.
- 84-4903. Tax on nonresident—alternative tax based on gross sales.
- 84-4903.5. Monthly payment by withholding agent—exception.
- 84-4905. Adjusted gross income.
- 84-4908. Alternative deduction allowed in computing net income.
- 84-4913. Information agents' duties.
- 84-4914. Returns and payment of tax—penalty and interest—refunds—credits.
- 84-4920.1. Suspension of running of statute of limitations—grounds.
- 84-4924. Penalties for violations of act.
- 84-4928.1. Jeopardy assessments.
- 84-4931. Divulging information unlawful—exceptions—penalty.
- 84-4938. Furnishing copy of federal return, copies of federal corrections, and filing amended return required.
- 84-4946. Quarterly payment by employer—exception.



**84-4901. (2295.1) Income tax—definitions.** For the purpose of this act unless otherwise required by the context:

(1) and (2). \* \* \* [Same as parent volume.]

(3) The term “taxable year” means the taxpayer’s taxable year for federal income tax purposes.

(4). \* \* \* [Same as parent volume.]

(5) The word “paid” for the purposes of the deductions and credits under this act means paid or accrued or paid or incurred, and the terms “paid or incurred” and “paid or accrued” shall be construed according to the method of accounting upon the basis of which the taxable income is computed under this act. The term “received” for the purpose of computation of taxable income under this act, means received or accrued and the term “received or accrued” shall be construed according to the method of accounting upon the basis of which the taxable income is computed under this act.

(6) and (7). \* \* \* [Same as parent volume.]

(8) The words “foreign country” or “foreign government” mean any jurisdiction other than the one embraced within the United States, its territories and possessions.

(9). \* \* \* [Same as parent volume.]

(10) The term “net income” means the adjusted gross income of a taxpayer less the deductions allowed by this act.

(11) The term “taxable income” means the adjusted gross income of a taxpayer less the deductions and exemptions provided for in this act.

**History:** En. Sec. 1, Ch. 181, L. 1933; amd. Sec. 1, Ch. 166, L. 1947; amd. Sec. 1, Ch. 253, L. 1959; amd. Sec. 1, Ch. 62, L. 1967.

#### Amendments

The 1967 amendment substituted present subsection (3) for “The words ‘taxable year’ mean the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the net income is computed under this act, and include the period for which such return is made if made for a fractional part of such year under the provisions of this act or under regulations prescribed by the board. The words ‘fiscal year’ mean an accounting period of twelve (12) months, ending on the last day of any month other than

December thirty-first”; substituted “taxable income” for “net income” wherever found in subsection (5); substituted “its territories and possessions” for “The words ‘United States’ include the states, the territory of Hawaii, and the District of Columbia” at the end of subsection (8); made minor style changes in subsection (8); and inserted “adjusted” before “gross” in subsections (10) and (11).

#### Effective Date

Section 2 of Ch. 62, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 20, 1967.

#### Cross-References

Corporation income tax, 84-6901 et seq.

**84-4902. (2295.2) Rate of income tax.** There shall be levied, collected and paid for each taxable year, commencing on or after December 31, 1968 upon the taxable income of every taxpayer subject to this tax, after making allowance for exemptions and deductions, as hereinafter provided, a tax at the following rates, to wit:

(a) On the first one thousand dollars (\$1,000) of taxable income, or any part thereof, at the rate of two per centum (2%);

(b) On the next one thousand dollars (\$1,000) of taxable income, or any part thereof, at the rate of three per centum (3%);

(c) On the next two thousand dollars (\$2,000) of taxable income, or any part thereof, at the rate of four per centum (4%);

(d) On the next two thousand dollars (\$2,000) of taxable income, or any part thereof, at the rate of five per centum (5%);

(e) On the next two thousand dollars (\$2,000) of taxable income, or any part thereof, at the rate of six per centum (6%);

(f) On the next two thousand dollars (\$2,000) of taxable income, or any part thereof, at the rate of seven per centum (7%);

(g) On the next four thousand dollars (\$4,000) of taxable income, or any part thereof, at the rate of eight per centum (8%);

(h) On the next six thousand dollars (\$6,000) of taxable income, or any part thereof, at the rate of nine per centum (9%);

(i) On the next fifteen thousand dollars (\$15,000) of taxable income, or any part thereof, at the rate of ten per centum (10%);

(j) On any taxable income in excess of thirty-five thousand dollars (\$35,000) of taxable income, or any part thereof, at the rate of eleven per centum (11%).

**History:** En. Sec. 2, Ch. 181, L. 1933; amd. Sec. 1, Ch. 40, Ex. L. 1933; amd. Sec. 1, Ch. 228, L. 1957; amd. Sec. 1, Ch. 265, L. 1959; amd. Sec. 1, Ch. 281, L. 1965; amd. Sec. 1, Ch. 5, Ex. L. 1967; amd. Sec. 1, Ch. 10, Ex. L. 1969.

#### Amendments

The 1967 amendment substantially re-wrote this section, increasing the tax. For previous text, see parent volume.

The 1969 amendment, in the introductory paragraph, substituted "1968" for "1966"; inserted subdivisions (g) and (h); redesignated former subdivision (g) as subdivision (i) and raised the rate from "eight per centum (8%)" to "ten per centum (10%)"; redesignated former subdivision (h) as subdivision (j), substituted "thirty-five thousand dollars" for "twenty-five thousand dollars" after "in excess of" and raised the rate from "ten per centum (10%)" to "eleven per centum (11%)."

#### Tax Credit

Section 2 of Ch. 5, Ex. Laws 1967 read "After the amount of tax liability has

been computed for the current taxable year, each person filing a Montana individual income tax return may subtract five per cent (5%) of the tax liability, and the amount remaining is the amount due the state of Montana. Section 2 was repealed by Section 7, Ch. 10, Ex. Laws 1969.

#### Effective Dates

Section 3 of Ch. 5, Ex. Laws 1967 read "This act shall be effective as to all taxable years commencing on or after December 31, 1966, whether on a calendar or fiscal year basis."

Section 4 of Ch. 5, Ex. Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 20, 1967.

#### Repealing Clause

Section 5 of Ch. 5, Ex. Laws 1967 repealed all acts and parts of acts in conflict therewith.

#### Cross-References

Multistate tax compact, sec. 84-6701.

**84-4902.1. Surtax.** After the amount of tax liability has been computed for the current taxable year, each person filing a Montana individual income tax return shall add, as a surtax, ten per cent (10%) of the tax liability, and the amount so arrived at is the amount due the state of Montana.

**History:** En. Sec. 2, Ch. 10, Ex. L. 1969.

#### Title of Act

An act to amend section 84-4902, R. C. M. 1947, relating to the rate of income tax; and providing for a surcharge; and changing and adding income tax brackets and rates of income tax for all

taxable years commencing on or after December 31, 1968; and further amending section 84-4903.5, R. C. M. 1947, to provide for monthly payments to the state board of equalization of amounts withheld from payments to nonresidents under section 84-4903.2, R. C. M. 1947, if the amount withheld is \$50 or more in each

quarterly period of any year, applying changes when payments are due to payment periods beginning after June 30, 1969; and providing an effective date.

**84-4903. (2295.3) Tax on nonresident—alternative tax based on gross sales.** (a) \* \* \* [Same as parent volume.]

(b) Pursuant to the provisions of article III, section 2, of the Multi-state Tax Compact (Title 84, chapter 67, R. C. M. 1947), every nonresident taxpayer required to file a return, and whose only activity in Montana consists of making sales and who does not own or rent real estate or tangible personal property within Montana, and whose annual gross volume of sales made in Montana during the taxable year do not exceed one hundred thousand dollars (\$100,000), may elect to pay an income tax of one-half ( $\frac{1}{2}$ ) of one per cent (1%) of the dollar volume of gross sales made in Montana during the taxable year. Such tax shall be in lieu of the taxes imposed under sections 84-4902 and 84-4902.1. The gross volume of sales made in Montana during the taxable year shall be determined according to the provisions of article IV, sections 16 and 17 of the Multi-state Tax Compact.

**History:** En. Sec. 3, Ch. 181, L. 1933; amd. Sec. 2, Ch. 253, L. 1959; amd. Sec. 1, Ch. 199, L. 1963; amd. Sec. 1, Ch. 15, L. 1971.

#### **Amendments**

The 1971 amendment added subsection (b) providing for an alternative tax for nonresident taxpayers.

#### **Effective Dates**

Section 2 of Ch. 15, Laws 1971 read "This act is effective for taxable years beginning on and after January 1, 1971."

Section 3 of Ch. 15, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 2, 1971.

#### **Cross-References**

Multistate tax compact, sec. 84-6701.

**84-4903.5. Monthly payment by withholding agent—exception.** Withholding agents required to deduct and withhold tax payments under the provisions of section 84-4903.2 shall remit such payments monthly to the state board of equalization for each monthly period on or before the fifteenth day of the month following the close of such monthly period, except that payments for the month of December shall be made on or before the following January 31, payments for the month of March shall be made on or before the following April 30, payments for the month of June shall be made on or before the following July 31, and payments for the month of September shall be made on or before the following October 31.

Provided, however, that when the aggregate total amount of the tax withheld under the provisions of section 84-4903.2 shall amount to less than fifty dollars (\$50) in each quarterly period of any year, such withholding agent shall not be required to file the monthly returns or to make the monthly payments last hereinabove provided for, but in lieu thereof such withholding agent shall, on or before February fifteenth of the year next succeeding that in which such payments were withheld, file an annual return in such form as shall be determined by the board, and shall pay therewith the amount required by this act to be deducted and withheld by such withholding agent from all payments paid during the preceding calendar year.



**History:** En. Sec. 5, Ch. 208, L. 1959; amd. Sec. 2, Ch. 154, L. 1961; amd. Sec. 3, Ch. 10, Ex. L. 1969.

#### Amendments

The 1969 amendment substituted "monthly" for "quarterly" wherever appearing in the section; in the first paragraph, substituted "fifteenth day of the month" for "last day of the month," and added the exception; and, in the second paragraph, substituted "fifty dollars (\$50)" for "ten dollars (\$10)."

#### Effective Dates

Section 4 of Ch. 10, Ex. Laws 1969 read "Section 1 [84-4902] and section 2 [84-4902.1] of this act shall be effective as to all taxable years commencing on or after

December 31, 1968, whether on a calendar or fiscal year basis."

Section 5 of Ch. 10, Ex. Laws 1969 read "Section 3 [84-4903.5] of this act shall be effective as to all payment periods beginning after June 30, 1969."

Section 6 of Ch. 10, Ex. Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 19, 1969.

#### Repealing Clauses

Section 7 of Ch. 10, Ex. Laws 1969 read "Section 2 of chapter five, extraordinary session laws of Montana, 1967 is repealed."

Section 8 of Ch. 10, Ex. Laws 1969 repealed all acts and parts of acts in conflict therewith.

**84-4905. (2295.5) Adjusted gross income.** (1) Adjusted gross income shall be the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954 or as that section may be labeled or amended, and in addition shall include the following:

(a) Interest received on obligations of another state or territory, or county, municipality, district, or other political subdivision thereof:

(b) Refunds received of federal income tax, to the extent the deduction of such tax resulted in a reduction of Montana income tax liability.

(2) Adjusted gross income does not include the following which are exempt from taxation under this act:

(a) Interest income from obligations of the United States government, the state of Montana, county, municipality, district, or other political subdivision thereof:

(b) All benefits received under the Federal Employees Retirement Act not in excess of three thousand six hundred dollars (\$3,600).

(c) All benefits paid under the Montana Teachers Retirement Act which are specified as exempt from taxation by section 75-2713.

(d) All benefits paid under the Montana Public Employees Act which are specified as exempt from taxation by section 68-1303.

(e) All benefits paid under the Montana Highway Patrol Retirement Act which are specified as exempt from taxation by section 31-221.

(f) Montana income tax refunds or credits thereof.

(3) \* \* \* [Same as parent volume.]

**History:** En. Sec. 5, Ch. 181, L. 1933; amd. Sec. 1, Ch. 167, L. 1947; amd. Sec. 1, Ch. 260, L. 1955; amd. Sec. 1, Ch. 58, L. 1963; amd. Sec. 1, Ch. 129, L. 1965; amd. Sec. 1, Ch. 236, L. 1971; amd. Sec. 1, Ch. 345, L. 1971.

#### Compiler's Notes

This section was amended twice in 1971, once by Ch. 236 and once by Ch. 345. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to

conflict, the compiler has made a composite section embodying the changes made by both amendments.

Section 75-2713, referred to at the end of subdivision (2) (c), was repealed by Sec. 496, Ch. 5, Laws of 1971. Similar provisions are now contained in sec. 75-6215.

#### Amendments

Chapter 236, Laws of 1971, added "district, or other political subdivision thereof" to the end of subdivision (1) (a);

added "the state of Montana, county, municipality, district, or other political subdivision thereof" to the end of subdivision (2) (a); and made minor changes in phraseology.

Chapter 345, Laws of 1971, deleted former subdivision (2) (b); and redesignated former subdivisions (c), (d), (e), (f), and (g) of subsection (2) as subdivisions (b), (c), (d), (e), and (f), respectively.

#### Effective Dates

Section 2 of Ch. 236, Laws 1971 read "The provisions of this act shall apply to all taxable years commencing on or after December 31, 1970, whether on a calendar or fiscal year basis."

Section 3 of Ch. 236, Laws 1971 pro-

vided the act should be in effect from and after its passage and approval. Approved March 9, 1971.

Section 2 of Ch. 345, Laws 1971 read "For the taxable year beginning on and after January 1, 1971, the amendment to Section 1 of the act is effective in accordance with Public Law 91-156, Section 1 (12 U. S. C. 548 (5))."

"For taxable years beginning on and after January 1, 1972, the amendment to Section 1 of this act is effective in accordance with Public Law 91-156, Section 2 (12 U. S. C. 548)."

Section 3 of Ch. 345, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 15, 1971.

### 84-4907. (2295.7) Nonresident taxpayers.

#### Cross-References

Multistate tax compact, sec. 84-6701.

**84-4908. (2295.8) Alternative deduction allowed in computing net income.** In the case of a resident individual, a standard deduction equal to ten per cent (10%) of adjusted gross income shall be allowed if elected by the taxpayer on his return. The standard deduction shall be in lieu of all deductions allowed under section 84-4906, R. C. M. 1947. The maximum standard deduction shall be five hundred dollars (\$500) except in the case of a single joint return of husband and wife the maximum standard deduction shall be one thousand dollars (\$1,000). The standard deduction shall not be allowed to either the husband or the wife if the tax of one of the spouses is determined without regard to the standard deduction. For purposes of this section, the determination of whether an individual is married shall be made as of the last day of the taxable year; provided, however, if one of the spouses dies during the taxable year, the determination shall be made as of the date of death.

**History:** En. Sec. 8, Ch. 181, L. 1933; amd. Sec. 1, Ch. 207, L. 1949; amd. Sec. 1, Ch. 187, L. 1953; amd. Sec. 4, Ch. 260, L. 1955; amd. Sec. 1, Ch. 202, L. 1969; amd. Sec. 1, Ch. 357, L. 1971.

#### Amendments

The 1969 amendment, in the first sentence, deleted "prior to the allowance of any deductions provided for in section 84-4906" after "adjusted gross income"; substituted the present second sentence for former provision which was similar to the second sentence save for the exception; substituted, in the fourth sentence, "either the husband or the wife" for "a husband or wife" and "one of the spouses" for "the other spouse" and deleted "on the basis of net income computed" after "determined"; and added the last sentence.

The 1971 amendment deleted "except the deduction allowed for federal income taxes under paragraph (b) of that section" from the end of the second sentence.

#### Effective Dates

Section 2 of Ch. 202, Laws 1969 read "This act is effective as to taxable years ending on and after December 31, 1968."

Section 2 of Ch. 357, Laws 1971 read "The provisions of this act shall be effective for taxable years beginning on and after January 1, 1971."

Section 3 of Ch. 357, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 15, 1971.

**84-4913. (2295.13) Information agents' duties.** Every information agent shall make return to the board of complete information concerning the following distributions made for any individual during the taxable year, upon which no withholding tax has been deducted:

(1) Sums in excess of ten dollars (\$10) distributed as dividends, interest as defined in section 6049 of the Internal Revenue Code of 1965 or as that section may be amended, and payments made under a retirement plan covering an owner-employee as defined in section 401 (c) (3) of the Internal Revenue Code of 1965 or as that section may be amended;

(2) Interest, other than that specified in subsection (1) of this section, rents, royalties, salaries, wages, prizes, awards, annuities, pensions and other fixed or determinable gains, profits and income in excess of six hundred dollars (\$600), except interest coupons payable to the bearer.

The return should be made under the regulations and in the form and manner prescribed by the board, provided, however, that for ease of reporting, the form shall be as nearly identical to the comparable federal form as possible.

**History:** En. Sec. 13, Ch. 181, L. 1933; in subsection (1), is codified as Tit. 26 of  
amd. Sec. 7, Ch. 260, L. 1955; amd. Sec. the United States Code.  
1, Ch. 205, L. 1967.

#### Amendments

#### Compiler's Notes

The Internal Revenue Code, referred to

The 1967 amendment completely re-wrote this section. For previous text, see parent volume.

**84-4914. (2295.14) Returns and payment of tax—penalty and interest—refunds—credits.** (1) Every single individual and every married individual not filing a joint return with his or her spouse and having a gross income for the taxable year of six hundred dollars (\$600) or over, and married individuals not filing separate returns and having a combined gross income for the taxable year of twelve hundred dollars (\$1,200) or over, shall be liable for a return to be filed on such forms and according to such rules and regulations as the board of equalization may prescribe.

(2) In accordance with instructions set forth by the board, every taxpayer who is married and living with husband or wife and is required to file a return may, at his or her option, file a joint return with husband or wife even though one of the spouses has neither gross income nor deductions. If a joint return is made, the tax shall be computed on the aggregate taxable income and the liability with respect to the tax shall be joint and several. If a joint return has been filed for a taxable year, the spouses may not file separate returns after the time for filing the return of either has expired, unless the board so consents.

(3) \* \* \* [Same as parent volume.]

(4) All taxpayers, including, but not limited to those subject to the provisions of sections 84-4939 and 84-4943, as amended, shall compute the amount of income tax payable and shall at the time of filing the return required by this act, pay to the board any balance of income tax remaining unpaid after crediting the amount withheld as provided by section 84-



4943, as amended, and/or any payment made by reason of an estimated tax return provided for in section 84-4939, as amended, provided however, the tax so computed is greater by one dollar (\$1) than the amount withheld and/or paid by estimated return as provided in this act.

If the amount of tax withheld and/or payment of estimated tax exceeds by more than one dollar (\$1) the amount of income tax as computed, the taxpayer shall be entitled to a refund of the excess.

(5) \* \* \* [Same as parent volume.]

(6) If the amount of tax as verified is greater than the amount theretofore paid, the excess shall be paid by the taxpayer to the board within thirty (30) days after notice of the amount of the tax as computed with interest added at the rate of nine per centum (9%) per annum or fraction thereof on the additional tax. In such case there shall be no penalty because of such understatement, provided the deficiency is paid within thirty (30) days after the first notice of the amount is mailed to the taxpayer.

If payment is not made within thirty (30) days or if the understatement is due to negligence on the part of the taxpayer, but without fraud, there shall be added to the amount of the deficiency five per centum (5%) thereof, provided, however, that no deficiency penalty shall be less than two dollars (\$2). Interest will be computed at the rate of nine per centum (9%) per annum or fraction thereof on the additional assessment. Except as otherwise expressly provided in this subdivision, the interest shall in all cases be computed from the date the return and tax was originally due (as distinguished from the due date as it may have been extended) to the date of payment.

If the time for filing a return is extended, the taxpayer shall pay in addition, interest thereon at the rate of nine per centum (9%) per annum from the time when the return was originally required to be filed to the time of payment.

**History:** En. Sec. 14, Ch. 181, L. 1933; amd. Sec. 1, Ch. 34, L. 1949; amd. Sec. 8, Ch. 260, L. 1955; amd. Sec. 2, Ch. 227, L. 1957; amd. Sec. 5, Ch. 253, L. 1959; amd. Sec. 1, Ch. 201, L. 1963; amd. Sec. 1, Ch. 347, L. 1969.

#### Amendments

The 1969 amendment, in subsection (1), substituted "not filing a joint return with

his or her spouse and" for "filing a separate return" and "not filing separate returns" for "filing a joint return"; in subsection (2), added the last sentence; in subsection (4), made minor changes in punctuation; and in subsection (6), raised the interest rate on delinquent income taxes from "six per centum (6%)" per annum to "nine per centum (9%)."

### 84-4915. (2295.15) Exemption allowed nonresident, etc.

#### Cross-References

Multistate tax compact, sec. 84-6701.

**84-4920.1. Suspension of running of statute of limitations—grounds.** The running of the statute of limitations provided for under section 84-4920 shall be suspended during any period that the federal statute of limitations for collection of federal income tax has been suspended by (1) written agreement signed by the taxpayer or, (2) when the taxpayer has instituted an action which has the effect of suspending the running of the federal

statute of limitations, and for one (1) additional year. If the taxpayer fails to file a record of changes in federal taxable income or an amended return as required by section 84-4938, the said statute of limitations shall not apply until five years from the date the federal changes become final or the amended federal return was filed. If the taxpayer omits from gross income an amount properly includable therein which is in excess of twenty-five per cent (25%) of the amount of adjusted gross income stated in the return the said statute of limitations shall not apply for two additional years from the time specified in section 84-4920.

**History:** En. Sec. 2, Ch. 103, L. 1955;  
amd. Sec. 1, Ch. 61, L. 1967.

#### **Amendments**

The 1967 amendment substantially rewrote this section. For previous text, see parent volume.

**84-4924. (2295.24) Penalties for violations of act.** (1) If any person, without intent to evade any tax imposed by this act, fails to make a return of income at the time required by or under the provisions of this act, there shall be imposed a minimum penalty of ten dollars (\$10) for such failure, or, if a tax in excess of two hundred dollars (\$200) is due, a penalty in an amount equal to five (5) per centum thereof, unless it is shown that the failure was due to reasonable cause and not due to neglect. If any person, without intent to evade any tax imposed by this act, fails to pay any tax if one is due at the time required by or under the provisions of this act, there shall be added to the tax an additional amount equal to ten (10) per centum thereof, but not less than ten dollars (\$10), unless it is shown that the failure was due to reasonable cause and not due to neglect. Interest at the rate of nine per centum (9%) per annum shall be added to the tax for the entire period it remains unpaid.

(2) If any person fails with intent to evade any tax imposed by this act, to make a return of income or to pay a tax if one is due at the time required by or under the provisions of this act there shall be added to the tax an additional amount equal to twenty-five per centum (25%) thereof, but such additional amount shall in no case be less than twenty-five dollars (\$25), and interest at one (1) per centum for each month or fraction of a month during which the tax remains unpaid.

(3) and (4). \* \* \* [Same as parent volume.]

**History:** En. Sec. 24, Ch. 181, L. 1933;  
amd. Sec. 1, Ch. 163, L. 1955; amd. Sec. 3,  
Ch. 201, L. 1963; amd. Sec. 2, Ch. 347, L.  
1969.

#### **Amendments**

The 1969 amendment, in subsection (1), deleted "or pay any tax if one is due" after "return of income," rewrote the penalty provision in the first sentence which formerly provided for a 5% penalty, but

not less than \$2; inserted the second sentence; raised the interest rate in the third sentence from 6 to 9% per year; and in subsection (2), substituted "twenty-five dollars (\$25)" for "two dollars (\$2.00)" after "shall in no case be less than."

#### **Effective Date**

Section 3 of Ch. 347, Laws 1967 read "This act is effective as to taxable years ending on and after December 31, 1968."

**84-4928.1. Jeopardy assessments.** If the state board of equalization finds that the assessment or collection of the tax or a deficiency for any taxable year will be jeopardized in whole or in part by delay, it may

mail or issue notice of its findings to the taxpayer, together with a demand for immediate payment of the tax or deficiency declared to be in jeopardy, including penalty and accrued interest. In the case of a tax for a current period, the state board of equalization may declare the taxable period of the taxpayer immediately terminated and shall mail or issue notice of its findings to the taxpayer, together with a demand for immediate payment of the tax based on the period declared terminated.

A jeopardy assessment is immediately due and payable and proceedings for collection may be commenced at once.

**History:** En. 84-4928.1 by Sec. 2, Ch. 212, L. 1967.

the state of Montana; amending section 84-4946, R. C. M. 1947.

#### Title of Act

An act providing an accelerated tax collection in the event it appears that a delay will jeopardize the collection of tax due

#### Effective Date

Section 3 of Ch. 212, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 28, 1967.

**84-4931.** (2295.30) **Divulging information unlawful—exceptions—penalty.** (1) to (3). \* \* \* [Same as parent volume.]

(4) Further, notwithstanding any of the provisions of this section, the board shall furnish to the Montana highway patrol board all information necessary to identify those persons qualifying for the additional exemption for blindness pursuant to section 84-4910 (d), for the purpose of enabling said highway patrol board to administer the provisions of section 31-127, R.C.M. 1947.

**History:** En. Sec. 30, Ch. 181, L. 1933; amd. Sec. 1, Ch. 110, L. 1951; amd. Sec. 1, Ch. 253, L. 1967.

#### Amendments

The 1967 amendment added subsection (4).

**84-4936. Income tax statute—reference—definition.**

#### Compiler's Notes

Sections 84-4916, 84-4918, 84-4933 to 84-4935, contained in the reference to Chapter 49 of this Title in this section in the parent volume, were repealed by Sec. 15, Ch. 260, Laws 1955; section 84-4923 was

repealed by Sec. 2, Ch. 212, Laws 1957; sections 84-4925, 84-4944, 84-4949, and 84-4952, were repealed by Sec. 4, Ch. 227, Laws 1957; and sections 84-4953 and 84-4957 were repealed by Sec. 8, Ch. 126, Laws 1963.

**84-4937. Credit allowed resident taxpayers for income taxes, etc.**

#### Cross-References

Multistate tax compact, sec. 84-6701.

**84-4938. Furnishing copy of federal return, copies of federal corrections, and filing amended return required.** Every taxpayer shall upon request of the board, furnish a copy of the return for the corresponding year which he has filed or may file with the federal government showing his net income and how obtained and the several sources from which derived. If the amount of a taxpayer's taxable income is changed or corrected by the United States Internal Revenue Service or other competent authority, the taxpayer shall report such change or correction to the board within ninety days after receiving notice thereof. If a taxpayer files an amended federal income tax return changing or correcting his



federal taxable income for any taxable year, he shall also file an amended return with the state board of equalization within ninety days thereafter. The board shall supply all necessary forms and shall return all such forms to the taxpayer after they have been examined by the board, upon the request of the taxpayer.

**History:** En. 84-4938 by Sec. 11, Ch. 260, L. 1955; amd. Sec. 2, Ch. 61, L. 1967.

#### Amendments

The 1967 amendment substantially re-wrote this section. For previous text, see parent volume.

#### Effective Date

Section 3 of Ch. 61, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 20, 1967.

**84-4946. Quarterly payment by employer—exception.** On or before the last day of the months of April, July, October and January of each calendar year, beginning with the month of October, 1955, every employer subject to the provisions of sections 84-4943 and 84-4945 shall file a return in such form and containing such information as may be required by the board, and shall pay therewith the amount required by section 84-4943 to be deducted and withheld by said employer from wages paid during the preceding quarterly period of three (3) months, beginning with wages paid from and after July 1, 1955.

If the total amount of the tax withheld by an employer under the provisions of this act upon the wages of all employees of any employer is less than ten dollars (\$10) in each quarterly period of any year, such employer shall not be required to file the quarterly returns or to make the quarterly payments as provided in the preceding paragraph, but in lieu thereof such employer shall, on or before February fifteenth of the year succeeding that in which such wages were paid, file an annual return in such form as may be required by the board, and shall pay therewith the amount required to be deducted and withheld by the said employer from all wages paid during the preceding calendar year.

Provided, however, that if the board has reason to believe that collection of the amount of any tax withheld is in jeopardy, it may proceed as provided for under section 84-4928.1 with respect to jeopardy assessments of income tax.

**History:** En. Sec. 5, Ch. 246, L. 1955; amd. Sec. 1, Ch. 212, L. 1967.

#### Amendments

The 1967 amendment, in the first paragraph, substituted "sections 84-4943 and 84-4945" for "this act" after "provisions of"; substituted "as may be required by" for "as shall be determined by" after "such information"; and substituted "section 84-4943" for "this act" after "the amount required by"; and, in the second paragraph, substituted "If the" for "Pro-

vided, however, that when the aggregate" before "total amount of the tax"; inserted "by an employer" after "withheld"; substituted "as provided in the preceding paragraph" for "last hereinabove provided for" after "quarterly payments"; deleted "next" before "succeeding"; substituted "as may be required by" for "as shall be determined by" after "in such form"; deleted "by this act" after "the amount required"; added the last paragraph; and made minor changes in phraseology.

## CHAPTER 51—INSURANCE COMPANIES GENERAL PROPERTY TAX

### 84-5101. (2111) Assessment and taxation of insurance companies.

#### Cross-References

Multistate tax compact, sec. 84-6701.

## CHAPTER 54—MINES TAXATION—GENERAL PROPERTY AND NET PROCEEDS TAX

## Section

84-5402. Net proceeds tax—statement of yield, penalty, extension of time.

84-5405. Lien of tax and penalty.

**84-5401. (2088) Taxation of mines.****Cross-References**

Multistate tax compact, sec. 84-6701.

**84-5402. (2089) Net proceeds tax—statement of yield, penalty, extension of time.** Every person, partnership, corporation, or association, engaged in mining, extracting or producing from any quartz vein or lode, placer claim, dump or tailings, or other place or sources whatever, precious stones or gems, gold, silver, copper, coal, lead, petroleum, natural gas, or other valuable mineral, must on or before the thirty-first day of March of each year make out a statement of the gross yield of the above-named metals or minerals from each mine owned or worked by such person, corporation or association during the year preceeding the first day of January of the year in which such statement is made, and the value thereof. Such statement shall be in the form prescribed by the state board of equalization, and must be verified by the oath of such person or the manager, superintendent, agent, president or vice-president of such corporation, association or partnership, and must be delivered to the state board of equalization on or before the thirty-first day of March. Such statement shall show the following:

1 to 12. \* \* \* [Same as parent volume.]

If any person shall fail, neglect or refuse to file the statement required by this section within the time required, or within any extended period of time allowed, the state board of equalization when transmitting the net proceeds valuations to the counties shall inform the county assessor of such failure, neglect or refusal and the county assessor in addition to the net proceeds tax, if any, shall assess a penalty of  $\frac{2}{3}$  of 1% of such tax for each calendar month or fraction thereof that the required statement is not filed, deducting therefrom any moneys collected by the state board of equalization required by this section. The state board of equalization shall assess a penalty of \$25 for each calendar month or fraction thereof, not exceeding four months, that the required statement is not filed, to be collected by the state board of equalization and deposited to the credit of the general fund of the state of Montana.

The state board of equalization shall, upon a showing of reasonable cause, grant an extension of time for filing the statement required by this section. This penalty shall be in addition to penalties provided in section 84-5410.

**History:** En. Sec. 1, Ch. 237, L. 1921; re-en. Sec. 2089, R. C. M. 1921; amd. Sec. 1, Ch. 191, L. 1925; amd. Sec. 1, Ch. 139, L. 1927; amd. Sec. 1, Ch. 161, L. 1933; amd. Sec. 1, Ch. 188, L. 1935; amd. Sec. 1, Ch. 95, L. 1947; amd. Sec. 1, Ch. 138, L. 1969.

**Amendments**

The 1969 amendment added the last two paragraphs.

**84-5405. (2090.2) Lien of tax and penalty.** The tax and/or penalty so assessed on net proceeds shall be and shall constitute a lien upon all of the right, title and interest of such operator in or to such mine or mining claim and upon all of the right, title and interest in or to the machinery, buildings, tools and equipment used in operating said mine or mining claim, and the tax and/or penalty on such net proceeds may be collected, and the payment thereof enforced, by the seizure and sale of the personal property upon which the said tax and/or penalty is a lien, in the same manner as other personal property is seized and sold for delinquent taxes, or by the sale of the mine and improvements, as provided for the sale of real property for delinquent taxes, or by the institution of a civil action for its collection in any court of competent jurisdiction; provided, however, that a resort to any one of the methods of enforcing collection, as herein provided for, shall not bar the right to resort to either or both of the other methods, but that any two or all of the methods herein provided for may be used until the full amount of such tax and/or penalty is collected.

**History:** En. Sec. 4, Ch. 161, L. 1933;  
amd. Sec. 2, Ch. 138, L. 1969.

**Amendments**

The 1969 amendment inserted "and/or

penalty" after "The tax" at the beginning of the section; and added "and the tax and/or penalty \* \* \* such tax and/or penalty is collected."

**CHAPTER 56—CIGARETTE TAX—LICENSES—STAMPS**

Section	
84-5606.	The tax.
84-5606.2.	Definitions.
84-5606.3.	Wholesaler's and retailer's licenses—multiple places of business—application forms.
84-5606.4.	Vending machines not places of business per se—reports.
84-5606.5.	Wholesaler's and retailer's license fees—renewal—display of license.
84-5606.6.	Disposition of license fees—appropriations—transfer to general fund—justification of expenses.
84-5606.7.	Affixing of insignia.
84-5606.8.	Revocation or suspension of license—hearing and appeal—duration—sale of cigarettes after revocation or suspension a misdemeanor—forfeiture.
84-5606.9.	Unlawful acts when license not current and valid—misdemeanor—forfeiture.
84-5606.10.	Tax imposed by section 84-5606.
84-5606.11.	Only licensed wholesalers and retailers to affix insignia.
84-5606.12.	Purchase of insignia at discount to defray costs—defrayment inapplicable to certain portion of tax.
84-5606.13.	Use of tax meter machine authorized—insignia to be approved—marking of imported packages of cigarettes required—supervision of machines—charge—report.
84-5606.14.	Resale of insignia prohibited—unused meter settings.
84-5606.15.	Payment for insignia or affixation within thirty days—bond—new licensees to pay cash.
84-5606.16.	Proceedings upon failure or refusal to pay tax—penalty.
84-5606.17.	Tax meter users to keep certain records—examination of records.
84-5606.18.	Sale and use of cigarettes a misdemeanor if insignia requirements not met.
84-5606.19.	Place where violations committed deemed a nuisance.
84-5606.20.	Shipments or deliveries into or out of state to be reported by carrier—form and contents of report.
84-5606.21.	Transportation of cigarettes without insignia a misdemeanor unless in interstate commerce—vehicle, cigarettes and equipment subject to seizure and forfeiture.
84-5606.22.	Inventory of seized property—application for return of property.



- 84-5606.23. Investigations, inquiries and hearings authorized—testimony under oath—subpoena powers—finding and order to be made and filed.
- 84-5606.24. Hearing or rehearing before board.
- 84-5606.25. Appeal to district court—notice of appeal—perfecting appeal within thirty days—bond—hearing date.
- 84-5606.26. Board's duties and powers—arrest, entry of complaint and lawful search and seizure authorized.
- 84-5606.27. Promulgation of rules and regulations.
- 84-5606.28. County attorneys and peace officers to assist in enforcement of act—appointment of additional assistants and division authorized—presumption of violation.
- 84-5606.29. Board entitled to sue for unpaid tax and costs—treble damages.
- 84-5606.30. Employment of clerical and field assistants—disposition of taxes—war veterans' compensation fund abolished.
- 84-5606.31. Violation of act a misdemeanor unless otherwise provided—penalties.

### 84-5601 to 84-5605. Repealed.

#### Repeal

Sections 84-5601 to 84-5605 (Secs. 1 to 5, Ch. 289, L. 1947; Secs. 1, 2, Ch. 18, L.

1957), relating to licensing of cigarette dealers and distributors, were repealed by Sec. 32, Ch. 140, Laws 1969.

**84-5606. The tax.** (1) All taxes paid pursuant to the provisions of this section shall be conclusively presumed to be direct taxes on the retail consumer precollected for the purpose of convenience and facility only. When the tax is paid by any other person such payment shall be considered as an advance payment and shall be added to the price of the cigarettes and recovered from the ultimate consumer or user. Any person selling cigarettes at retail shall state or separately display in the licensed premises a notice of the tax included in the selling price and charged or payable pursuant to this section. The provisions of this subdivision shall in no way affect the method of collection of such tax as provided by this section.

(2) From and after the effective date of this amendatory law, there is hereby levied, imposed and assessed, and there shall be collected and paid to the state of Montana, upon cigarettes sold or possessed in this state, the following excise tax which shall be paid prior to the time of sale and delivery thereof, to wit: Nine cents (9¢) on each package containing not more than twenty (20) cigarettes, and when packages shall contain more than twenty (20) cigarettes, then nine cents (9¢) on each twenty (20) or fraction of twenty (20) cigarettes contained in such package.

(3) From and after the effective date of this amendatory law there is hereby levied, imposed and assessed, and there shall be collected and paid to the state of Montana, upon cigarettes sold or possessed in this state, the following excise tax, in addition to the excise tax on cigarettes, levied, imposed and assessed by subdivision (2) of this section 84-5606, an additional tax which shall be paid prior to the time of sale and delivery of such cigarettes, to wit:

Two cents (2¢) on each package containing not more than twenty (20) cigarettes, and when packages shall contain more than twenty (20) cigarettes, then two cents (2¢) on each twenty (20) or fraction of twenty (20) cigarettes contained in such package; which additional tax shall continue in force until the payment and retirement of all bonds of the state of Montana, and the payment of interest thereon, issued under the authority

of said Initiative No. 54 as amended, for the purpose of paying an honorarium to the residents of Montana who were in military service in the military forces of the United States in World War II, the Korean War, or World War I, and until the payment and retirement of all long-range building program bonds issued under the provisions of Title 79, chapter 22, of the Revised Codes of Montana, 1947.

(4) From and after the effective date of this amendatory act of the thirty-eighth legislative assembly of the state of Montana, there is hereby levied, imposed and assessed, and there shall be collected and paid to the state of Montana, upon cigarettes sold or possessed in this state, the following excise tax, in addition to the excise tax on cigarettes, levied, imposed and assessed by subdivisions (2) and (3) of this section 84-5606, an additional tax which shall be paid prior to the time of sale and delivery of such cigarettes, to wit:

One cent (1¢) on each package containing not more than twenty (20) cigarettes, and when packages shall contain more than twenty (20) cigarettes, then one cent (1¢) on each twenty (20) or fraction of twenty (20) cigarettes contained in such package; which additional tax shall continue in force until the payment and retirement of the additional bonds of the state of Montana authorized by amendatory acts of the thirty-fifth and thirty-eighth legislative assemblies, and the payment of the interest thereon and until the payment and retirement of all long-range building program bonds issued under the provisions of Title 79, chapter 22, of the Revised Codes of Montana, 1947.

(5) Within seventy-two (72) hours after receipt by the distributor or dealer of any such cigarettes, except as hereinafter provided, he shall cause to be securely affixed thereto, the required insignia denoting the tax thereon. Said insignia shall be properly canceled prior to sale or removal for consumption under such regulations as the board may prescribe. Each package shall have the required insignia to affix thereto in such a manner that the insignia will be destroyed when the package is opened. Every person who shall make, alter, forge or counterfeit any license stamp or insignia provided for in this law, or who shall assist or be concerned therein, or who shall have in his possession any altered, forged, counterfeit or spurious stamp, license or insignia, with intent to defraud the state, is guilty of forgery, and shall be punished by imprisonment in the state prison for not less than one (1) year or more than fourteen (14) years.

**History:** En. Sec. 6, Ch. 289, L. 1947; amd. Sec. 16, Initiative No. 54 (L. 1951, p. 781); amd. Sec. 1, Ch. 123, L. 1953; amd. Sec. 3, Ch. 18, L. 1957; amd. Sec. 7, Ch. 44, L. 1957; amd. Sec. 1, Ch. 222, L. 1957; amd. Sec. 1, Ch. 97, L. 1963; amd. Sec. 6, Ch. 270, L. 1963; amd. Sec. 5, Ch. 318, L. 1967; amd. Sec. 4, Ch. 222, L. 1971.

subdivision (4), substituted the same phrase for "and the payment of the expenses of administration of the amendatory act."

The 1971 amendment increased the tax specified in subsection (2) from five cents to nine cents per package and made minor changes in style.

#### Amendments

The 1967 amendment added "and until the payment \* \* \* Revised Codes of Montana, 1947" at the end of the second paragraph of subdivision (3), and after "interest thereon" in the second paragraph of

#### Referendum Result

Section 1 of Ch. 318, Laws 1967, read: "It is determined that the electors of the state at the general election held in November, 1966, approved the levy and collection of the three-cent (3¢) per package

cigarette tax authorized by section 84-5606, subdivisions (3) and (4), R. C. M. 1947, for the purpose of financing the cost of constructing and remodeling state buildings; this referendum measure having been presented at said election in the manner directed by chapter 264 of the

Session Laws of the thirty-ninth legislative assembly, and having been approved by a majority of the electors voting on the question; and that it is now necessary to establish the procedure by which said referendum may be made effective."

#### INITIATIVE MEASURE NO. 54 AMENDMENTS

Section 9 of chapter 270 of the 1963 Session, which amended Initiative Measure No. 54 (Laws 1951, pp. 781 to 790) was amended by section 1 of chapter 112 of the 1967 Session. Section 1 of chapter 112 of the 1967 Session was amended by section 1 of chapter 236 of the 1969 Session; Section 9 of the act now reads:

**Chapter 270, Laws 1963; amd. Chapter 112, Laws 1967; amd. Chapter 236, Laws 1969.**

Section 9. Claims for benefits under the provisions of subdivision (1) of section 2, and/or under section 3 of said Initiative No. 54, as by this amendatory act amended, may be filed at any time before the expiration of five (5) years and six (6) months from and after the January first next following the date of the passage and approval of this act, provided, however, that said period of five

(5) years and six (6) months shall be extended for a period equal to the period, or the aggregate of the periods, of the time during which the administration of this act shall be suspended, by reason of litigation or from any other cause.

[The remainder of Ch. 112, Laws 1967 read as follows:

"Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

"Section 3. This act shall be in full force and effect upon its passage and approval." Approved February 21, 1967.]

**84-5606.2. Definitions.** As used in this act the following definitions shall apply unless the context otherwise requires:

(a) The word "board" shall mean the state board of equalization of the state of Montana.

(b) The word "person" shall mean any individual, firm, fiduciary, partnership, corporation, trust, organization or association however formed.

(c) "Cigarettes" shall mean any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of nontobacco paper, or any other substance or material except tobacco.

(d) The words "insignia" or "indicia" shall mean the impression or mark approved by the state board of equalization, under the provisions of this act.

(e) The words "full face value of insignia" shall mean the total amount of the tax levied under this act.

(f) The words "public warehouses" shall mean agents or representatives of manufacturers who receive cigarettes in carload lots for distribution to wholesaler and retailers in original cases.

(g) The word "wholesaler" shall mean and include any person resident in this state who brings or causes to be brought into this state unstamped cigarettes purchased directly from the manufacturers thereof and stores, sells, or otherwise disposes of the same after they shall reach this state; and also any person who, within this state, manufactures or produces, directly or indirectly, cigarettes and sells or distributes the same within this state.



(h) The words "licensed wholesaler" shall mean a wholesaler duly licensed under the provisions of this act.

(i) The words "cigarette vendor" shall mean and include any person, company or corporation, doing business in the state, who purchases cigarettes through a wholesaler for ten (10) or more cigarette vending machines, which he operates for a profit in premises or locations other than his own. Such person, company or corporation shall be treated as a wholesaler. Any person, company, corporation or fraternal organization who operates less than ten (10) cigarette vending machines shall be treated as a retailer.

(j) The word "retailer" shall mean any person other than a wholesaler, who is engaged in the business of selling cigarettes at retail.

(k) The words "licensed retailer" shall mean any person other than a wholesaler, who is duly licensed under the provisions of this act.

(l) The words "sale" and "sell" shall mean and include any transfer of cigarettes by sale, as defined by section 87A-2-106, R. C. M. 1947, or by gift, barter or exchange.

**History:** En. Sec. 1, Ch. 140, L. 1969.

#### **Title of Act**

An act repealing sections 84-5601, 84-5602, 84-5603, 84-5604, 84-5605, 84-5607, 84-5608, 84-5609, 84-5610, 84-5611, 84-5612, 84-5613, 84-5614, 84-5615, 84-5616, 84-5617, 84-5618, 84-5619, 84-5620, 84-5621, 84-5622, and 84-5623, R. C. M. 1947, and providing for annual license fees and for annual licensing of wholesalers and retailers of cigarettes, and for the payment of the

costs of enforcement of state cigarette laws; and providing procedures for the collection of the tax imposed by section 84-5606, R. C. M. 1947; and providing for penalties for violations of this act, and providing for the administration of this act; and providing revenue for the general fund of the state of Montana.

#### **Cross-References**

Multistate tax compact, sec. 84-6701.

**84-5606.3. Wholesaler's and retailer's licenses—multiple places of business—application forms.** Every wholesaler or retailer shall obtain a license from the board before engaging in the business of wholesaler or retailer. A separate application and a separate license shall be required for each place of business owned, controlled or operated by such wholesaler or retailer within the state of Montana. Application forms shall require the type and general description of applicant organizations, names and home addresses of all known owners, state whether or not principals of such organization have been convicted of a felony and identify each such individual, and such other pertinent information as the board may require in regularly promulgated regulations.

**History:** En. Sec. 2, Ch. 140, L. 1969.

**84-5606.4. Vending machines not places of business per se—reports.** Cigarette vending machines shall not be considered as places of business per se but a report of each and all machines shall be made on forms prescribed by the board, which shall state the name and address of the cigarette vendor, the assigned location of each machine with best machine identification available, type of business, and such other information as the board may require for proper administration of this act.

**History:** En. Sec. 3, Ch. 140, L. 1969.

**84-5606.5. Wholesaler's and retailer's license fees—renewal—display of license.** Each application for a wholesaler's license shall be accompanied by a fee of fifty dollars (\$50) effective July 1, 1969. Each application for a retailer's license shall be accompanied by a fee of five dollars (\$5) effective July 1, 1969. These licenses shall be renewed annually upon payment of the annual fee in the amount set forth above, and shall be effective for one year, without proration. Each license shall be prominently displayed on the licensed premises, and a separate license shall be displayed at each place of business owned, controlled or operated by such wholesaler or retailer.

**History:** En. Sec. 4, Ch. 140, L. 1969.

**84-5606.6. Disposition of license fees—appropriations—transfer to general fund—justification of expenses.** All license fees collected under the provisions of this act shall be deposited monthly with the state treasurer in the board's cigarette enforcement account in the earmarked revenue fund. There shall be appropriated to the board, from said cigarette enforcement account, such sum as may be necessary to comply with the provisions of this act for the fiscal biennium ending June 30, 1971. On or before June 30, 1971, the board shall pay to the state treasurer to the credit of the state general fund, all funds in excess of seven thousand five hundred dollars (\$7,500) in said cigarette enforcement account, not needed for the administration of this act.

For the biennium beginning July 1, 1971, and each biennium thereafter, there shall be appropriated to the board a sum deemed justified and reasonable to operate the board's cigarette enforcement division, providing that after payment of all pending and known expenses, all sums so appropriated in excess of seven thousand five hundred dollars (\$7,500) not needed for the administration of this act, shall be transferred to the state general fund to be available for general fund purposes. Such transfer shall be made within fifteen (15) days of the last day of the biennium.

All expenses charged against said cigarette enforcement account shall be justified by itemized claims coupled with standard accounting reports.

**History:** En. Sec. 5, Ch. 140, L. 1969.

**84-5606.7. Affixing of insignia.** Wholesalers and retailers licensed under this act may buy, sell or have in their possession only cigarettes which have the insignia provided for in this act on each package. The insignia provided for in this act shall be sold to, and affixed by, licensed wholesalers and licensed retailers only.

**History:** En. Sec. 6, Ch. 140, L. 1969.

**84-5606.8. Revocation or suspension of license—hearing and appeal—duration—sale of cigarettes after revocation or suspension a misdemeanor—forfeiture.** The board may revoke or suspend the license of any wholesaler or retailer for failure to comply with any provision of this act or of the Unfair Cigarette Sales Act (sections 51-301 through 51-314, R. C. M. 1947), and with any lawful rule or regulation of the board made pursuant

to said laws. Any person aggrieved by such revocation or suspension may apply to the board for a hearing which shall be open to the public, and may further appeal to the court, as hereinafter provided. When a license has been duly revoked, no license shall again issue to such licensee for a period of one (1) year thereafter. When a license has been duly suspended, the suspension may be for any period not to exceed one (1) year. Any person who shall sell cigarettes after his license has been revoked or suspended is guilty of a misdemeanor, and shall be punished as hereinafter provided, and all cigarettes in his possession shall be seized and forfeited to the state.

**History:** En. Sec. 7, Ch. 140, L. 1969.

**84-5606.9. Unlawful acts when license not current and valid—misdemeanor—forfeiture.** No person shall sell, offer to sell, or possess with intent to sell, any cigarettes, at wholesale or retail unless his license is current and valid, under the provisions of this act. Any person violating the provisions of this section is guilty of a misdemeanor, and shall be punished as hereinafter provided, and all cigarettes in his possession shall be seized and forfeited to the state.

**History:** En. Sec. 8, Ch. 140, L. 1969.

**84-5606.10. Tax imposed by section 84-5606.** The tax referred to in this act shall mean the tax imposed by section 84-5606, R. C. M. 1947. The full face value of the insignia or tax shall be added to the cost of the cigarettes and recovered from the ultimate consumer or user.

**History:** En. Sec. 9, Ch. 140, L. 1969.

**84-5606.11. Only licensed wholesalers and retailers to affix insignia.** Insignia shall be affixed to packages of cigarettes only by licensed wholesalers and licensed retailers.

**History:** En. Sec. 10, Ch. 140, L. 1969.

**84-5606.12. Purchase of insignia at discount to defray costs—defrayment inapplicable to certain portion of tax.** Every licensed wholesaler and licensed retailer shall be entitled to purchase said insignia at full face value less eight per cent (8%) of the face value, upon payment therefor, as defrayment of the costs of affixing insignia and precollecting such tax on behalf of the state of Montana. This defrayment is not applicable to that portion of the tax collected for any veterans' honorarium or long-range building program.

**History:** En. Sec. 11, Ch. 140, L. 1969.

#### **Calculating Wholesale Price**

Despite provisions of this section for discount to wholesalers in purchasing tax insignia, the full face value of the insignia is to be used in calculating wholesale

cigarette price under section 51-301, so that board of equalization formula reducing wholesale cost by discount became improper with enactment of chapter 140 of 1969 Laws. *Montana Assn. of Tobacco & Candy Distributors v. State Board of Equalization*, — M —, 476 P 2d 775.

**84-5606.13. Use of tax meter machine authorized—insignia to be approved—marking of imported packages of cigarettes required—supervision of machines—charge—report.** The board may authorize any whole-



salers or retailers of cigarettes licensed under this act to use a tax meter machine with which to imprint an insignia upon each package of cigarettes imported, sold or delivered in this state. The insignia shall be one approved by the board. Each package of cigarettes imported into this state, delivered or sold therein shall be marked with the proper insignia of such tax-stamping meter and thereafter any original package of cigarettes so marked may be lawfully possessed and sold within the state by any wholesaler or retailer licensed under this act. The board shall supervise and check the operation of such tax meter machines. The operator of such machine before using the same, shall take the meter thereof to the county treasurer, of the county in which the machine is operated, who is authorized to, and shall set said meter for the number of packages specified and required by the operator. Prior to setting said meter the county treasurer shall charge said operator the amount of money proper for said setting, less the expense defrayment of eight per cent (8%) provided for in section 11 [84-5606.12]. The county treasurer shall collect this amount in advance unless the board has allowed the purchaser credit as provided in section 14 [84-5606.15]. The county treasurer shall report to the board on forms prescribed by it, the name of the licensed wholesaler or licensed retailer and the number of packages for which said meter was set and shall forward to the board any amounts collected from said licensee.

**History:** En. Sec. 12, Ch. 140, L. 1969.

**84-5606.14. Resale of insignia prohibited—unused meter settings.** No wholesaler or retailer shall resell to any other wholesaler or retailer any insignia purchased by him from the board. Any wholesaler or retailer who has on hand any meter settings at the time of discontinuing his business of selling cigarettes, may apply to the board and be paid the face value of said meter settings less the amount of the expense defrayment allowed by section 11 [84-5606.12].

**History:** En. Sec. 13, Ch. 140, L. 1969.

**84-5606.15. Payment for insignia or affixation within thirty days—bond—new licensees to pay cash.** The board shall permit a licensed wholesaler or licensed retailer to pay for the insignia purchased, or affixation of insignia, within thirty (30) days after the date of purchase and shall require such licensee to file with the board a bond issued by a surety company approved by the state department of insurance as to solvency and responsibility and authority to transact business in the state, for such amount as the board may fix, but not in excess of an amount equal to the maximum insignia purchases incurred for any thirty (30) day period in the previous calendar year; provided, however, that any newly licensed wholesaler or licensed retailer shall pay on a cash basis for one (1) complete calendar year, after which the board may permit him thirty (30) days to pay for the purchase or affixation of insignia and shall require a bond as hereinabove provided.

**History:** En. Sec. 14, Ch. 140, L. 1969.

**84-5606.16. Proceedings upon failure or refusal to pay tax—penalty.** If any person fails or refuses to pay the tax required by this act when due, the board shall proceed to determine the tax due from such information as the board can obtain and shall assess the tax so determined against such person and notify him of the amount thereof. After such notice such tax shall become due and payable, together with a penalty of five per cent (5%) of such tax, or five dollars (\$5) per day for each day after the date of such notice, whichever is greater.

History: En. Sec. 15, Ch. 140, L. 1969.

**84-5606.17. Tax meter users to keep certain records—examination of records.** All tax meter users shall keep for a period of one (1) year, all invoices of cigarettes purchased and imported by them, all receipts issued by them and insignia purchased, also, an accurate record of all sales of cigarettes by such tax meter users, showing the name and address of each purchaser, the date of sale, the quantity of each kind sold, the name of any carrier, the shipping point and destination. Such tax meter users shall permit the board, its assistants, authorized agents or representatives to examine all taxable items of cigarettes, invoices, receipts, books, paper, memoranda and records, as may be necessary to determine whether the tax meter machine has been used as required, or the insignia required by this act had been purchased and used, or to determine the amount of such tax as may be due or unpaid.

History: En. Sec. 16, Ch. 140, L. 1969.

**84-5606.18. Sale and use of cigarettes a misdemeanor if insignia requirements not met.** Every person who sells any packages of cigarettes which does not bear the insignia required by this act, and every person who shall use or consume within this state, any cigarette, unless the same shall be taken from the original package having affixed thereto the insignia required by this act, is guilty of a misdemeanor and shall be punished as hereinafter provided.

History: En. Sec. 17, Ch. 140, L. 1969.

**84-5606.19. Place where violations committed deemed a nuisance.** Every person having possession or control of, or who maintains a building or place where cigarettes are sold in violation of this act, or permits the same to be done in any place or building possessed, controlled or maintained by him, is guilty of maintaining and keeping a nuisance and the building or place so used, together with the personal property and fixtures used in connection therewith shall be deemed a nuisance, and such person shall be enjoined and such building or place, personal property and fixtures abated as a nuisance, at the instance of the state.

History: En. Sec. 18, Ch. 140, L. 1969.

**84-5606.20. Shipments or deliveries into or out of state to be reported by carrier—form and contents of report.** Every common carrier hauling, transporting or shipping into or out of the state of Montana, from or to

any other state, any cigarettes shall report in writing such shipments or deliveries to the board, on forms furnished by the board, giving the date, the person to whom the same was consigned and delivered and the quantity as shown by the bill of lading, and such other information as the board may require.

**History:** En. Sec. 19, Ch. 140, L. 1969.

**84-5606.21. Transportation of cigarettes without insignia a misdemeanor unless in interstate commerce—vehicle, cigarettes and equipment subject to seizure and forfeiture.** It shall be unlawful for any person to transport into, receive, carry or move from place to place within this state, except in the course of interstate commerce, any cigarettes which do not bear the insignia required by this act. Any person violating the provisions of this section is guilty of a misdemeanor and shall be punished as hereinafter provided, and any motor vehicle, airplane, conveyance, vehicle or other means of transportation, in which cigarettes are being unlawfully transported, together with the cigarettes and other equipment or personal property used in connection with such transportation, and found in such means of transportation, shall be subject to seizure by the board, its duly authorized agent, or any sheriff or deputy, or other peace officer, and shall be subject to forfeiture in the manner hereinafter provided.

**History:** En. Sec. 20, Ch. 140, L. 1969.

**84-5606.22. Inventory of seized property—application for return of property.** Upon the seizure of any cigarettes, and within two (2) days thereafter, the person or officer making such seizure shall deliver an inventory of the property seized to the person from whom such seizure was made, if known, and file a copy thereof with the board. The person from whom the seizure was made, or any other person claiming an interest in the property seized, may apply for its return as provided in sections 95-713 through 95-716, R. C. M. 1947.

**History:** En. Sec. 21, Ch. 140, L. 1969.

**84-5606.23. Investigations, inquiries and hearings authorized—testimony under oath—subpoena powers—finding and order to be made and filed.** The board and its duly authorized agents are empowered to conduct investigations, inquiries, and hearings hereunder, and any member thereof, or any agent, is authorized to administer oaths and take testimony under oath, relative to the matter of inquiry or investigation. The board, or its authorized agent, may subpoena witnesses and require the production of books, papers and documents pertinent to such inquiry. The board, or its agent, after the hearing, shall make findings and an order, in writing, which findings and order shall be filed in the office of the board and open for public inspection.

**History:** En. Sec. 22, Ch. 140, L. 1969.

**84-5606.24. Hearing or rehearing before board.** Any person aggrieved by any action of the board or its duly authorized agents, under the provi-



sions of this act, may apply to the board, in writing, for a hearing or rehearing thereon within thirty (30) days after such action of the board or its authorized agents. The board shall promptly consider such application, set same for hearing and notify the applicant of the time and place fixed for such hearing or rehearing, which may be at its office or in the county of the applicant. After such hearing or rehearing, the board may make any further or other order in the premises, as it may deem proper and lawful and shall furnish a copy thereof to the applicant. The board, on its own initiative, may order a hearing on any matter concerned with the administration of this act, upon at least ten (10) days notice in writing to the person or persons to be investigated.

History: En. Sec. 23, Ch. 140, L. 1969.

**84-5606.25. Appeal to district court—notice of appeal—perfecting appeal within thirty days—bond—hearing date.** Any person aggrieved by any action or decision of the board, made under the provisions of this act, may appeal therefrom to the district court of the county where appellant resides, which appeal shall be taken by notice of appeal in writing, setting forth the actions or decisions of the board, of which the appellant is aggrieved. Such appeal shall be perfected within thirty (30) days after notice of any action or decision of the board, and shall be taken by serving a notice of appeal upon the board and filing the same with the clerk of said court, together with a good and sufficient bond to the state of Montana. The condition of such bond shall be to the effect that appellant agrees to prosecute said appeal diligently, and if the court shall finally decide that the state is entitled to judgment, that appellant will pay the amount thereof together with costs of such appeal. The bond shall be in the form required by law and in such an amount as the court may require. The notice of appeal shall be signed by the appellant or his attorney, and the matter appealed shall be heard upon ten (10) days' notice given by either party, unless a different time is specified by the court. Said district court may grant such relief as the law and the facts in the premises require.

History: En. Sec. 24, Ch. 140, L. 1969.

**84-5606.26. Board's duties and powers—arrest, entry of complaint and lawful search and seizure authorized.** The board is charged with the duty of administering and enforcing the provisions of this act, and the board, its members and agents, are hereby given the powers of peace officers, and are authorized and empowered to arrest any person violating any provision of this act, and to enter complaint before any court of competent jurisdiction, and to lawfully search and seize and use as evidence, any unlawful or unlawfully possessed license, stamp or insignia found in the possession of any person or place.

History: En. Sec. 25, Ch. 140, L. 1969.

**84-5606.27. Promulgation of rules and regulations.** The board shall have the power and authority to prescribe all rules and regulations not inconsistent with the provisions of this act, for the detailed and efficient

administration thereof. All such rules, regulations and orders promulgated shall be published promptly and a copy distributed to each wholesale licensee; be published cumulative annually, and maintained in full as a public record.

History: En. Sec. 26, Ch. 140, L. 1969.

**84-5606.28. County attorneys and peace officers to assist in enforcement of act—appointment of additional assistants and division authorized—presumption of violation.** In the enforcement of this act, the board may call to its assistance, and it shall be the duty of any county attorney, or any peace officer, in this state, to assist the board in the enforcement of this act; and the board is hereby authorized to appoint such additional assistants, and to establish an additional division of cigarette enforcement, as may be required to carry out the provisions of this act. Whenever any cigarettes are found in the place of business of any unlicensed wholesaler, retailer or other person, without the insignia affixed and canceled, or not marked as having been received by the unlicensed wholesaler, retailer or person within the preceding seventy-two (72) hours the presumption shall be that such cigarettes are kept therein in violation of the provisions of this chapter.

History: En. Sec. 27, Ch. 140, L. 1969.

**84-5606.29. Board entitled to sue for unpaid tax and costs—treble damages.** In the case of any violation of this chapter, the board shall be entitled to sue, in the district where the board maintains its principal office for the amount of the unpaid tax and costs, including reasonable expense of the board in effecting collection of the unpaid tax. Where the court finds the failure to pay the tax has been willful, the court must, in addition, assess damages in treble the amount of the tax found to be due.

History: En. Sec. 28, Ch. 140, L. 1969.

**84-5606.30. Employment of clerical and field assistants—disposition of taxes—war veterans' compensation fund abolished.** The board is hereby authorized to employ such clerical and field assistants as may be necessary to properly administer the provisions of this law. All moneys collected under the provisions of subdivision (2) of section 84-5606, less the expense of collecting all the taxes levied, imposed and assessed by said section 84-5606, shall be paid to the state treasurer and deposited as follows: fifty per cent (50%) in the general fund, fifteen per cent (15%) in the long-range building program account in the sinking fund, and thirty-five per cent (35%) in the long-range building program account in the bond proceeds and insurance clearance fund. All taxes levied, imposed and assessed under the provisions of subdivision (3) of said section 84-5606 shall, when collected, be paid to the state treasurer and credited to a subfund in the sinking fund and shall, while any of the bonds hereafter issued and sold for the purpose of paying an honorarium, or adjusted compensation, to the residents of Montana who were in military service in the military forces of the United States in World War I or World War II, or any of the interest thereon, remain unpaid, be available for the payment thereof.

All taxes levied, imposed and assessed under the provisions of subdivision (4) of said section 84-5606 shall, when collected, be paid to the state treasurer and credited to a subfund in the sinking fund, which shall, while any of the bonds hereafter issued and sold, in addition to the bonds authorized by said Initiative Measure No. 54, as originally enacted, or any of the interest upon such additional bonds, remain unpaid, be used only for the payment thereof, and of the expenses of administration of this act.

The War Veterans' Compensation Fund established by Initiative No. 54, as amended by chapter 44, Laws of 1957, is abolished and all moneys in the fund are transferred to a subfund in the bond proceeds and insurance clearance fund. When all veterans' honoraria authorized by law have been paid, such moneys shall be transferred to the two (2) accounts in the sinking fund established by this section.

After all of the outstanding War Veterans' Compensation Bonds and World War I Compensation Bonds have been paid or redeemed, or after the necessary funds have been set aside for their payment or redemption, the balance of the proceeds theretofore collected under the provisions of subdivisions (3) and (4) of said section 84-5606 shall be transferred to the sinking fund account provided for in section 79-2203, R. C. M. 1947.

**History:** En. Sec. 29, Ch. 140, L. 1969; amd. Sec. 5, Ch. 222, L. 1971.

lected under subdivision (2) of sec. 84-5606.

#### Amendments

The 1971 amendment substituted the provisions for apportionment at the end of the second sentence of the first paragraph for a provision requiring deposit in the general fund of all moneys col-

#### Effective Date

Section 6 of Ch. 222, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 5, 1971.

**84-5606.31. Violation of act a misdemeanor unless otherwise provided—penalties.** Unless hereinbefore expressly otherwise provided, the violation of any provision of this act shall constitute a misdemeanor, and any person violating any such provision shall be punished by a fine of not less than one hundred dollars (\$100), or more than five hundred dollars (\$500), or by imprisonment in the county jail for not less than thirty (30) days or more than six (6) months, or by both such fine and imprisonment; and if such person is the holder of a license issued under this act, such license shall be revoked by the board for a period of one (1) year.

**History:** En. Sec. 30, Ch. 140, L. 1969.

#### Repealing Clause

Section 32 of Ch. 140, Laws 1969 read "Sections 84-5601 through 84-5605, R. C. M. 1947, and sections 84-5607 through 84-5623, R. C. M. 1947, are repealed."

#### Separability Clause

Section 31 of Ch. 140, Laws 1969 read "The provisions of this act shall be severable and if any of its provisions shall be held unconstitutional or void, the remainder of this act shall continue in full force and effect."

#### 84-5607 to 84-5623. Repealed.

##### Repeal

Sections 84-5607 to 84-5623 (Secs. 7 to 23, Ch. 289, L. 1947; Sec. 16, Initiative No. 54,

L. 1951, p. 781; Sec. 1, Ch. 123, L. 1953; Secs. 4 to 6, Ch. 18, L. 1957; Sec. 7, Ch. 44, L. 1957; Sec. 2, Ch. 222, L. 1957; Sec.



209, Ch. 147, L. 1963; Sec. 7, Ch. 270, L. 1963; Sec. 6, Ch. 318, L. 1967), relating to the administering of the cigarette tax, were repealed by Sec. 32, Ch. 140, Laws 1969.

#### CHAPTER 59—MICACEOUS MINERAL MINES—LICENSE TAXES

##### 84-5902. Persons subject to tax.

###### Cross-References

Multistate tax compact, sec. 84-6701.

#### CHAPTER 60—MIGRATORY PERSONAL PROPERTY—TAXATION

##### Section

84-6008. Assessment of personal property brought into the state—exceptions.

**84-6008. Assessment of personal property brought into the state—exceptions.** Any personal property, including livestock, brought, driven or coming into this state at any time during the year which is used in the state for hire, compensation or profit; or if the owner and/or the user of the property is engaged in gainful occupation or business enterprise in the state; or the property otherwise comes to rest and becomes a part of the general property of the state, shall be subject to taxation and shall be assessed for all taxes, levied or leviable for that year in the county in which the same shall thus be, in the same manner and to the same extent except as hereinafter otherwise provided, as though such property had been in the county on the regular assessment date; provided that such property has not been regularly assessed for the year in some other county of the state; provided further that nothing herein contained shall be construed into authority to assess or levy any tax against any merchant or dealer within this state on goods, wares or merchandise brought into the county to replenish the stock of such merchant or dealer, in addition to the tax levied against the inventory of said merchant or dealer on the regular assessment date; provided further, that this act shall not apply to motor vehicles brought, driven or coming into this state by any nonresident migratory bona fide agricultural workers temporarily employed in agricultural work in Montana where said motor vehicles are used exclusively for transportation of agricultural workers.

**History:** En. Sec. 1, Ch. 41, L. 1953; amd. Sec. 4, Ch. 290, L. 1967.

###### Cross-References

Multistate tax compact, sec. 84-6701.

###### Amendments

The 1967 amendment substituted "which is used in \* \* \* property of the state" for "and which shall remain in the state for a period not less than thirty (30) days" before "shall be subject"; deleted "and remain" after "thus be"; deleted "and" after "county of the state"; substituted "any" for "an additional" after "assess or levy"; and substituted "in addition to \* \* \* assessment date" for "so long as such addition does not materially increase the inventory or stock which has been duly assessed to such merchant or dealer as of the regular assessment date" before the third proviso.

###### Purchase from Dealer

Where new truck was brought into the state subsequent to the first day of January as replacement to a dealer's stock and therefore exempt from taxation under this section, truck was not subject to personal property taxation to the purchaser of the vehicle at the time of purchase, since he was not the owner of the truck on the date fixed by law for the assessment of property. *Schwartz v. Berg*, 147 M. 178, 411 P 2d 736.

## DECISIONS UNDER FORMER LAW

**Motor Vehicle Inventory**

State board of equalization would be enjoined from assessing cars or trucks brought into state as dealer's inventory after assessment date since dealer would

be taxed thereby in violation of proviso in former statute limiting subsequent tax assessments to material increases in inventory only. *Hardin Auto Co. v. Alley*, 149 M 1, 422 P 2d 346.

**84-6009. Repealed.****Repeal**

This section (Sec. 2, Ch. 41, L. 1953), which dealt with tax laws in relation to

listing of personal property, was repealed by Sec. 6, Ch. 290, Laws 1967.

## CHAPTER 61—UNITED STATES PROPERTY—TAXATION

**84-6101. Property of United States held under contract, etc.****Cross-References**

Multistate tax compact, sec. 84-6701.

CHAPTER 62—MINES OR WELLS PRODUCING NATURAL GAS OR PETROLEUM  
—NET PROCEEDS TAX**Section**

84-6202. Statement of yield, penalty, extension of time.

84-6213. Lien of tax and penalty—enforcement of payment.

**84-6202. Statement of yield, penalty, extension of time.** Every person engaged in mining upon any mine whatsoever containing natural gas, petroleum, or other crude or mineral oil must on or before the thirty-first day of March in each year make out and deliver to the state board of equalization a statement of the gross yield of such natural gas, petroleum, or other crude or mineral oil from each mine owned or worked by such person during the next preceding calendar year, and the value thereof. Such statement shall be in the form prescribed by the state board of equalization and must be verified by the oath of such person or the manager, superintendent, agent, president or vice-president of such corporation, association or partnership. Such statement shall show the following:

1 to 7. \* \* \* [Same as parent volume.]

If any person shall fail, neglect or refuse to file the statement required by this section within the time required, or within any extended period of time allowed, the state board of equalization when transmitting the net proceeds valuations to the counties shall inform the county assessor of such failure, neglect or refusal and the county assessor in addition to the net proceeds tax, if any, shall assess a penalty of  $\frac{2}{3}$  of 1% of such tax for each calendar month or fraction thereof that the required statement is not filed, deducting therefrom any moneys collected by the state board of equalization required by this section. The state board of equalization shall assess a penalty of \$25 for each calendar month or fraction thereof, not exceeding four months, that the required statement is not filed, to be collected by the state board of equalization and deposited to the credit of the general fund of the state of Montana.

The state board of equalization shall upon a showing of reasonable cause, grant an extension of time for filing the statement required by this section.

This penalty shall be in addition to penalties provided in section 84-6209.

**History:** En. Sec. 2, Ch. 135, L. 1955;  
amd. Sec. 1, Ch. 159, L. 1969.

**Amendments**

The 1969 amendment added the last three paragraphs.

**84-6208. County assessors to compute taxes.**

**Cross-References**

Multistate tax compact, sec. 84-6701.

**84-6213. Lien of tax and penalty—enforcement of payment.** The taxes and/or penalties on such net proceeds must be levied as the levy of other taxes is provided for, and every such tax and/or penalty is a lien upon the mine from which the natural gas, petroleum, or crude or mineral oil is mined or extracted, and is a prior lien upon all personal property and improvements used in the process of extracting such natural gas, petroleum, or crude or mineral oil; provided, however, that such personal or real property is owned by or under lease by the person who extracted said natural gas, petroleum, or other crude or mineral oil.

The tax and/or penalty on such net proceeds may be collected, and the payment thereof enforced, by the seizure and sale of the personal property upon which the said tax and/or penalty is a lien, in the same manner as other personal property is seized and sold for delinquent taxes, or by the sale of the mine and improvements, as provided for the sale of real property for delinquent taxes, or by the institution of a civil action for its collection in any court of competent jurisdiction; provided, however, that a resort to any one of the methods of enforcing collection, as herein provided for, shall not bar the right to resort to either or both of the other methods, but that any two or all of the methods herein provided for may be used until the full amount of such tax and/or penalty is collected.

**History:** En. Sec. 13, Ch. 135, L. 1955;  
amd. Sec. 2, Ch. 159, L. 1969.

**Amendments**

The 1969 amendment inserted "and/or penalties" and "and/or penalty" after "taxes" and "tax" where the references appear.

**CHAPTER 63—IMPORTERS TAX ON GASOLINE PURCHASED  
OUTSIDE STATE AND USED IN STATE**

**84-6305. Definition of other words and terms.**

**Compiler's Notes**

Section 84-1801 referred to in this sentence, was repealed by Sec. 20, Ch. 369,

Laws of 1969. For a similar provision in current law, see section 84-1846.

**84-6307. Failure or refusal to make and file return or false return, etc.**

**Compiler's Notes**

Section 84-1807 referred to in the last sentence, was repealed by Sec. 20, Ch.

369, Laws of 1969. For present law, see section 84-1858.



CHAPTER 64—FLIGHT PROPERTY OF AIRLINE COMPANIES—ASSESSMENT AND TAXATION

Section

84-6401. Definitions.

84-6404. Determination of value.

**84-6401. Definitions.** The following words and phrases, when used in this act, unless the context clearly indicates otherwise, shall have the meanings ascribed to them in this section:

(a) to (c). \* \* \* [Same as parent volume.]

(d) "Flight property" means aircraft fully equipped ready for flight used in air commerce.

(e) to (g). \* \* \* [Same as parent volume.]

**History:** En. Sec. 1, Ch. 249, L. 1955;  
amd. Sec. 1, Ch. 367, L. 1969.

**Amendments**

The 1969 amendment deleted "within the state of Montana" from the end of subdivision (d).

**84-6402. Assessment of flight property.**

**Cross-References**

Multistate tax compact, sec. 84-6701.

**84-6404. Determination of value.** The board shall determine the full and true valuation of all flight property of all airlines operating in this state or used by every scheduled airline company in air commerce. This valuation may be ascertained by:

(1) Determining the full and true valuation of all flight property, owned and operated by every scheduled airline company, as an integrated operation; and,

(2) Allocating to the state of Montana, from this total valuation, a valuation which represents this state's proper share of the valuation of the flight property, through the application of ratios, which are indicated in section 84-6403, subsections (8), (9), (10) and (11), against the total valuation.

**History:** En. Sec. 4, Ch. 249, L. 1955;  
amd. Sec. 2, Ch. 367, L. 1969.

**Amendments**

The 1969 amendment substituted "of all airlines operating in this state" for "operated" after "all flight property" and deleted "in this state" at the end of the first sentence and rewrote the second sentence, which read, "In determining the valuation apportioned to this state of such flight property, the board may consider the pro-

portion of total tonnage in the state, total time in equated plane hours, number of revenue ton miles and number of arrivals and departures as required to be reported under section 84-6403."

**Effective Date**

Section 3 of Ch. 367, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 15, 1967.

DECISIONS UNDER FORMER LAW

**Basis for Assessment**

Under former statute providing that board should determine valuation of all flight property used by scheduled airline in air commerce in state, assessment of airline using three types of aircraft but only one type in state was to be made only on

that portion of airline's business arising directly from aircraft used in state, and depreciated value of aircraft used in state was the base for taxation. *Western Air Lines, Inc. v. Michunovich*, 149 M 347, 423 P 2d 3, cert. den. 389 U S 952, 88 S Ct 336.

## CHAPTER 65—LICENSE TAXES—RACING ASSOCIATIONS

(Repealed—Section 15, Chapter 196, Laws of 1965; Section 6, Chapter 216, Laws of 1967)

**84-6502 to 84-6504. Repealed.****Repeal**

These sections (Secs. 2 to 4, Ch. 57, L. 1961), relating to the taxing of racing

associations, were repealed by Sec. 6, Ch. 216, Laws 1967.

## CHAPTER 66—PROPERTY TAX ON HOUSE TRAILERS

**Section**

84-6601. Definitions.

84-6604. Penalty for failure to display or produce declaration, sticker or receipt.

84-6605. Act restricted to trailers subject to taxation.

84-6606. Verified declaration of destination on out-of-state mobile homes—delivery and affixing to vehicle—obtaining tax receipt—exemptions.

84-6607. State board of equalization to make regulations.

**84-6601. Definitions. As used in this act:**

(1) "Mobile home" means forms of housing known as "trailers," "house trailers" or "trailer coaches" exceeding eight (8) feet in width or thirty-two (32) feet in length designed to be moved from one place to another by an independent power connected thereto.

(2) "House trailer" means; (a) A trailer or semitrailer other than a mobile home as defined in this section which is designed, constructed and equipped as a dwelling place, living abode or sleeping place (either permanently or temporarily) whether mobile or stationary; or

(b) a trailer or semitrailer whose chassis and exterior shell is designed and constructed for use as a house trailer, whether mobile or stationary.

(c) "dealer" means a person engaged in the distribution or sale of mobile homes.

**History:** En. Sec. 1, Ch. 275, L. 1965; **Amendments**  
amd. Sec. 4, Ch. 296, L. 1967.

The 1967 amendment substantially rewrote this section. For previous text, see parent volume.

**84-6604. Penalty for failure to display or produce declaration, sticker or receipt.** (1) Whoever makes a false or fraudulent declaration of destination, or, when required, fails to execute a declaration of destination or fails to produce a declaration of destination or tax paid receipt, if a tax paid receipt is required, is guilty of a misdemeanor and upon conviction is punishable by imprisonment in a county jail for not more than six (6) months, or by a fine of not more than five hundred dollars (\$500), or both.

(2) Whoever fails to display a property tax paid sticker or to produce a property tax paid receipt from fifteen (15) days after the due date for personal property taxes of one (1) year to the due date for personal property taxes of the next year shall constitute a misdemeanor punishable by a fine of not less than ten dollars (\$10) nor more than fifty dollars (\$50) or confinement in the county jail for not more than thirty (30) days or both such fine and imprisonment.

**History:** En. Sec. 4, Ch. 275, L. 1965; amd. Sec. 7, Ch. 296, L. 1967.

**Amendments**

The 1967 amendment inserted subsection

(1); designated the old section as new subsection (2); substituted "Whoever fails" for "The failure" before "to display"; and deleted "the failure" before "to produce."

**84-6605. Act restricted to trailers subject to taxation.** The provisions of this act shall apply only to those mobile homes and house trailers, as defined in this act, subject to assessment and taxation under section 84-406 and section 84-6008.

**History:** En. Sec. 5, Ch. 275, L. 1965; amd. Sec. 8, Ch. 296, L. 1967.

**Amendments**

The 1967 amendment inserted "mobile homes and" before "house trailers."

**84-6606. Verified declaration of destination on out-of-state mobile homes—delivery and affixing to vehicle—obtaining tax receipt—exemptions.**

(1) whoever brings a mobile home into the state of Montana shall immediately upon arrival in the state execute a written declaration verified under oath stating the destination of the mobile home and such other information as the state board of equalization shall require and shall deliver the original of the declaration to whoever is on duty at the nearest port of entry station, state vehicle weight station or such other places and persons as the state board of equalization may prescribe. He shall also immediately upon arrival in the state of Montana affix a copy of the declaration to the mobile home at a conspicuous place.

(2) Whoever moves a mobile home from a point within the state of Montana to another point within or without the state of Montana shall first:

(a) Execute the declaration provided for in subsection (1) of this section, deliver the original of it to the treasurer of the county in which the move originates or to such other person as the state board of equalization shall prescribe and affix a copy of it to the mobile home to be moved at a conspicuous place;

(b) Obtain from the county treasurer of the county in which the move originates a receipt showing payment in full of property taxes due with respect to that mobile home to the date it is moved.

(3) The provisions of subsection (2) (b) of this section shall not apply whenever a person moves a mobile home:

(a) From a point without to a point within the state of Montana.

(b) Between places of business of dealers within or without the state of Montana.

(c) From the place of business of a dealer to a point within or without the state of Montana.

**History:** En. Sec. 5, Ch. 296, L. 1967.

**84-6607. State board of equalization to make regulations.** The state board of equalization may make reasonable rules and regulations necessary for or as an aid to effectuation of the purposes of this act.

**History:** En. Sec. 6, Ch. 296, L. 1967.



## CHAPTER 67—MULTISTATE TAX COMPACT

## Section

- 84-6701. Compact adopted—text.  
84-6702. Montana compact commissioner—chairman of state board of equalization.  
84-6703. Alternate—member of state board of equalization.  
84-6704. Advisory committee—members—reimbursement—meetings.

**84-6701. Compact adopted—text.** The “Multistate Tax Compact” is hereby enacted into law and entered into with all jurisdictions legally joining therein, in the form substantially as follows:

## ARTICLE I. PURPOSES.

The purposes of this compact are to:

1. Facilitate proper determination of state and local tax liability of multistate taxpayers, including the equitable apportionment of tax bases and settlement of apportionment disputes.
2. Promote uniformity or compatibility in significant components of tax systems.
3. Facilitate taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration.
4. Avoid duplicative taxation.

## ARTICLE II. DEFINITIONS.

As used in this compact:

1. “State” means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.
2. “Subdivision” means any government unit or special district of a state.
3. “Taxpayer” means any corporation, partnership, firm, association, governmental unit or agency or person acting as a business entity in more than one state.
4. “Income tax” means a tax imposed on or measured by net income including any tax imposed on or measured by an amount arrived at by deducting expenses from gross income, one or more forms of which expenses are not specifically and directly related to particular transactions.
5. “Capital stock tax” means a tax measured in any way by the capital of a corporation considered in its entirety.
6. “Gross receipts tax” means a tax, other than a sales tax, which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which no deduction is allowed which would constitute the tax an income tax.
7. “Sales tax” means a tax imposed with respect to the transfer for a consideration of ownership, possession or custody of tangible personal property or the rendering of services measured by the price of the tangible personal property transferred or services rendered and which is required by state or local law to be separately stated from the sales price by the seller, or which is customarily separately stated from the sales price, but

does not include a tax imposed exclusively on the sale of a specifically identified commodity or article or class of commodities or articles.

8. "Use tax" means a nonrecurring tax, other than a sales tax, which (a) is imposed on or with respect to the exercise or enjoyment of any right or power over tangible personal property incident to the ownership, possession or custody of that property or the leasing of that property from another including any consumption, keeping, retention, or other use of tangible personal property and (b) is complementary to a sales tax.

9. "Tax" means an income tax, capital stock tax, gross receipts tax, sales tax, use tax, and any other tax which has a multistate impact, except that the provisions of Articles III, IV and V of this compact shall apply only to the taxes specifically designated therein and the provisions of Article IX of this compact shall apply only in respect to determinations pursuant to Article IV.

### ARTICLE III. ELEMENTS OF INCOME TAX LAWS.

#### Taxpayer Option, State and Local Taxes.

1. Any taxpayer subject to an income tax whose income is subject to apportionment and allocation for tax purposes pursuant to the laws of a party state or pursuant to the laws of subdivisions in two or more party states may elect to apportion and allocate his income in the manner provided by the laws of such state or by the laws of such states and subdivisions without reference to this compact, or may elect to apportion and allocate in accordance with Article IV. This election for any tax year may be made in all party states or subdivisions thereof or in any one or more of the party states or subdivisions thereof without reference to the election made in the others. For the purposes of this paragraph, taxes imposed by subdivisions shall be considered separately from state taxes and the apportionment and allocation also may be applied to the entire tax base. In no instance wherein Article IV is employed for all subdivisions of a state may the sum of all apportionments and allocations to subdivisions within a state be greater than the apportionment and allocation that would be assignable to that state if the apportionment or allocation were being made with respect to a state income tax.

#### Taxpayer Option, Short Form.

2. Each party state or any subdivision thereof which imposes an income tax shall provide by law that any taxpayer required to file a return, whose only activities within the taxing jurisdiction consist of sales and do not include owning or renting real estate or tangible personal property, and whose dollar volume of gross sales made during the tax year within the state or subdivision, as the case may be, is not in excess of \$100,000 may elect to report and pay any tax due on the basis of a percentage of such volume, and shall adopt rates which shall produce a tax which reasonably approximates the tax otherwise due. The multistate tax commission, not more than once in five years, may adjust the \$100,000 figure in order to reflect such changes as may occur in the real value of the dollar,

and such adjusted figure, upon adoption by the commission, shall replace the \$100,000 figure specifically provided herein. Each party state and subdivision thereof may make the same election available to taxpayers additional to those specified in this paragraph.

#### Coverage.

3. Nothing in this Article relates to the reporting or payment of any tax other than an income tax.

### ARTICLE IV. DIVISION OF INCOME.

1. As used in this Article, unless the context otherwise requires:

(a) "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

(b) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(c) "Compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(d) "Financial organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, co-operative bank, small loan company, sales finance company, investment company, or any type of insurance company.

(e) "Nonbusiness income" means all income other than business income.

(f) "Public utility" means any business entity (1) which owns or operates any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, except by pipeline, or the production, transmission, sale, delivery, or furnishing of electricity, water or steam; and (2) whose rates of charges for goods or services have been established or approved by a federal, state or local government or governmental agency.

(g) "Sales" means all gross receipts of the taxpayer not allocated under paragraphs of this Article.

(h) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

(i) "This state" means the state in which the relevant tax return is filed or, in the case of application of this Article to the apportionment and allocation of income for local tax purposes, the subdivision or local taxing district in which the relevant tax return is filed.

2. Any taxpayer having income from business activity which is taxable both within and without this state, other than activity as a financial organization or public utility or the rendering of purely personal services by an individual, shall allocate and apportion his net income as provided



in this Article. If a taxpayer has income from business activity as a public utility but derives the greater percentage of his income from activities subject to this Article, the taxpayer may elect to allocate and apportion his entire net income as provided in this Article.

3. For purposes of allocation and apportionment of income under this Article, a taxpayer is taxable in another state if (1) in that state he is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax, or (2) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

4. Rents and royalties from real or tangible personal property, capital gains, interest, dividends or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in paragraphs 5 through 8 of this Article.

5. (a) Net rents and royalties from real property located in this state are allocable to this state.

(b) Net rents and royalties from tangible personal property are allocable to this state: (1) if and to the extent that the property is utilized in this state, or (2) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(c) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

6. (a) Capital gains and losses from sales of real property located in this state are allocable to this state.

(b) Capital gains and losses from sales of tangible personal property are allocable to this state if (1) the property had a situs in this state at the time of the sale, or (2) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(c) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

7. Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

8. (a) Patent and copyright royalties are allocable to this state: (1) if and to the extent that the patent or copyright is utilized by the payer in this state, or (2) if and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(b) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(c) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

9. All business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three.

10. The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.

11. Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from sub-rentals.

12. The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the tax administrator may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

13. The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period.

14. Compensation is paid in this state if:

- (a) the individual's service is performed entirely within the state;
- (b) the individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or
- (c) some of the service is performed in the state and (1) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or (2) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

15. The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denomina-

tor of which is the total sales of the taxpayer everywhere during the tax period.

16. Sales of tangible personal property are in this state if:

(a) the property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale; or

(b) the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and (1) the purchaser is the United States government or (2) the taxpayer is not taxable in the state of the purchaser.

17. Sales, other than sales of tangible personal property, are in this state if:

(a) the income-producing activity is performed in this state; or

(b) the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

18. If the allocation and apportionment provisions of this Article do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(a) separate accounting;

(b) the exclusion of any one or more of the factors;

(c) the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(d) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

## ARTICLE V. ELEMENTS OF SALES AND USE TAX LAWS.

### Tax Credit.

1. Each purchaser liable for a use tax on tangible personal property shall be entitled to full credit for the combined amount or amounts of legally imposed sales or use taxes paid by him with respect to the same property to another state and any subdivision thereof. The credit shall be applied first against the amount of any use tax due the state, and any unused portion of the credit shall then be applied against the amount of any use tax due a subdivision.

### Exemption Certificates. Vendors May Rely.

2. Whenever a vendor receives and accepts in good faith from a purchaser a resale or other exemption certificate or other written evidence of exemption authorized by the appropriate state or subdivision taxing authority, the vendor shall be relieved of liability for a sales or use tax with respect to the transaction.



## ARTICLE VI. THE COMMISSION.

## Organization and Management.

1. (a) The Multistate Tax Commission is hereby established. It shall be composed of one "member" from each party state who shall be the head of the state agency charged with the administration of the types of taxes to which this compact applies. If there is more than one such agency, the state shall provide by law for the selection of the commission member from the heads of the relevant agencies. State law may provide that a member of the commission be represented by an alternate but only if there is on file with the commission written notification of the designation and identity of the alternate. The attorney general of each party state or his designee, or other counsel if the laws of the party state specifically provide, shall be entitled to attend the meetings of the commission, but shall not vote. Such attorneys general, designees, or other counsel shall receive all notices of meetings required under paragraph 1 (e) of this Article.

(b) Each party state shall provide by law for the selection of representatives from its subdivisions affected by this compact to consult with the commission member from that state.

(c) Each member shall be entitled to one vote. The commission shall not act unless a majority of the members are present, and no action shall be binding unless approved by a majority of the total number of members.

(d) The commission shall adopt an official seal to be used as it may provide.

(e) The commission shall hold an annual meeting and such other regular meetings as its bylaws may provide and such special meetings as its executive committee may determine. The commission bylaws shall specify the dates of the annual and any other regular meetings, and shall provide for the giving of notice of annual, regular and special meetings. Notice of special meetings shall include the reasons therefor and an agenda of the items to be considered.

(f) The commission shall elect annually, from among its members, a chairman, a vice-chairman and a treasurer. The commission shall appoint an executive director who shall serve at its pleasure, and it shall fix his duties and compensation. The executive director shall be secretary of the commission. The commission shall make provision for the bonding of such of its officers and employees as it may deem appropriate.

(g) Irrespective of the civil service, personnel or other merit system laws of any party state, the executive director shall appoint or discharge such personnel as may be necessary for the performance of the functions of the commission and shall fix their duties and compensation. The commission bylaws shall provide for personnel policies and programs.

(h) The commission may borrow, accept or contract for the services of personnel from any state, the United States, or any other governmental entity.

(i) The commission may accept for any of its purposes and func-

tions any and all donations and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any governmental entity, and may utilize and dispose of the same.

(j) The commission may establish one or more offices for the transacting of its business.

(k) The commission shall adopt bylaws for the conduct of its business. The commission shall publish its bylaws in convenient form, and shall file a copy of the bylaws and any amendments thereto with the appropriate agency or officer in each of the party states.

(l) The commission annually shall make to the governor and legislature of each party state a report covering its activities for the preceding year. Any donation or grant accepted by the commission or services borrowed shall be reported in the annual report of the commission, and shall include the nature, amount and conditions, if any, of the donation, gift, grant or services borrowed and the identity of the donor or lender. The commission may make additional reports as it may deem desirable.

### Committees.

2. (a) To assist in the conduct of its business when the full commission is not meeting, the commission shall have an executive committee of seven members, including the chairman, vice-chairman, treasurer and four other members elected annually by the commission. The executive committee, subject to the provisions of this compact and consistent with the policies of the commission, shall function as provided in the bylaws of the commission.

(b) The commission may establish advisory and technical committees, membership on which may include private persons and public officials, in furthering any of its activities. Such committees may consider any matter of concern to the commission, including problems of special interest to any party state and problems dealing with particular types of taxes.

(c) The commission may establish such additional committees as its bylaws may provide.

### Powers.

3. In addition to powers conferred elsewhere in this compact, the commission shall have power to:

(a) Study state and local tax systems and particular types of state and local taxes.

(b) Develop and recommend proposals for an increase in uniformity or compatibility of state and local tax laws with a view toward encouraging the simplification and improvement of state and local tax law and administration.

(c) Compile and publish information as in its judgment would assist the party states in implementation of the compact and taxpayers in complying with state and local tax laws.

(d) Do all things necessary and incidental to the administration of its functions pursuant to this compact.

## Finance.

4. (a) The commission shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that state for presentation to the legislature thereof.

(b) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amounts to be appropriated by each of the party states. The total amount of appropriations requested under any such budget shall be apportioned among the party states as follows: one-tenth in equal shares; and the remainder in proportion to the amount of revenue collected by each party state and its subdivisions from income taxes, capital stock taxes, gross receipts taxes, sales and use taxes. In determining such amounts, the commission shall employ such available public sources of information as, in its judgment, present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the sources used in obtaining information employed in applying the formula contained in this paragraph.

(c) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under paragraph 1 (i) of this Article: provided that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under paragraph 1 (i), the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(d) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its by-laws. All receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the commission.

(e) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any person authorized by the commission.

(f) Nothing contained in this Article shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

## ARTICLE VII. UNIFORM REGULATIONS AND FORMS.

1. Whenever any two or more party states, or subdivisions of party states, have uniform or similar provisions of law relating to an income tax, capital stock tax, gross receipts tax, sales or use tax, the commission may adopt uniform regulations for any phase of the administration of such law, including assertion of jurisdiction to tax, or prescribing uniform



tax forms. The commission may also act with respect to the provisions of Article IV of this compact.

2. Prior to the adoption of any regulation, the commission shall:

(a) As provided in its bylaws, hold at least one public hearing on due notice to all affected party states and subdivisions thereof and to all taxpayers and other persons who have made timely request of the commission for advance notice of its regulation-making proceedings.

(b) Afford all affected party states and subdivisions and interested persons an opportunity to submit relevant written data and views, which shall be considered fully by the commission.

3. The commission shall submit any regulations adopted by it to the appropriate officials of all party states and subdivisions to which they might apply. Each such state and subdivision shall consider any such regulation for adoption in accordance with its own laws and procedures.

#### ARTICLE VIII. INTERSTATE AUDITS.

1. This Article shall be in force only in those party states that specifically provide therefor by statute.

2. Any party state or subdivision thereof desiring to make or participate in an audit of any accounts, books, papers, records or other documents may request the commission to perform the audit on its behalf. In responding to the request, the commission shall have access to and may examine, at any reasonable time, such accounts, books, papers, records, and other documents and any relevant property or stock of merchandise. The commission may enter into agreements with party states or their subdivisions for assistance in performance of the audit. The commission shall make charges, to be paid by the state or local government or governments for which it performs the service, for any audits performed by it in order to reimburse itself for the actual costs incurred in making the audit.

3. The commission may require the attendance of any person within the state where it is conducting an audit or part thereof at a time and place fixed by it within such state for the purpose of giving testimony with respect to any account, book, paper, document, other record, property or stock of merchandise being examined in connection with the audit. If the person is not within the jurisdiction, he may be required to attend for such purpose at any time and place fixed by the commission within the state of which he is a resident: provided that such state has adopted this article.

4. The commission may apply to any court having power to issue compulsory process for orders in aid of its powers and responsibilities pursuant to this Article and any and all such courts shall have jurisdiction to issue such orders. Failure of any person to obey any such order shall be punishable as contempt of the issuing court. If the party or subject matter on account of which the commission seeks an order is within the jurisdiction of the court to which application is made, such application may be to a court in the state or subdivision on behalf of which the audit is being made or a court in the state in which the object of the order being sought

is situated. The provisions of this paragraph apply only to courts in a state that has adopted this Article.

5. The commission may decline to perform any audit requested if it finds that its available personnel or other resources are insufficient for the purpose or that, in the terms requested, the audit is impracticable of satisfactory performance. If the commission, on the basis of its experience, has reason to believe that an audit of a particular taxpayer, either at a particular time or on a particular schedule, would be of interest to a number of party states or their subdivisions, it may offer to make the audit or audits, the offer to be contingent on sufficient participation therein as determined by the commission.

6. Information obtained by any audit pursuant to this Article shall be confidential and available only for tax purposes to party states, their subdivisions or the United States. Availability of information shall be in accordance with the laws of the states or subdivisions on whose account the commission performs the audit, and only through the appropriate agencies or officers of such states or subdivisions. Nothing in this Article shall be construed to require any taxpayer to keep records for any period not otherwise required by law.

7. Other arrangements made or authorized pursuant to law for cooperative audit by or on behalf of the party states or any of their subdivisions are not superseded or invalidated by this Article.

8. In no event shall the commission make any charge against a taxpayer for an audit.

9. As used in this Article, "tax," in addition to the meaning ascribed to it in Article II, means any tax or license fee imposed in whole or in part for revenue purposes.

## ARTICLE IX. ARBITRATION.

1. Whenever the commission finds a need for settling disputes concerning apportionments and allocations by arbitration, it may adopt a regulation placing this Article in effect, notwithstanding the provisions of Article VII.

2. The commission shall select and maintain an arbitration panel composed of officers and employees of state and local governments and private persons who shall be knowledgeable and experienced in matters of tax law and administration.

3. Whenever a taxpayer who has elected to employ Article IV, or whenever the laws of the party state or subdivision thereof are substantially identical with the relevant provisions of Article IV, the taxpayer, by written notice to the commission and to each party state or subdivision thereof that would be affected, may secure arbitration of an apportionment or allocation, if he is dissatisfied with the final administrative determination of the tax agency of the state or subdivision with respect thereto on the ground that it would subject him to double or multiple taxation by two or more party states or subdivisions thereof. Each party state and subdivision thereof hereby consents to the arbitration as provided herein, and agrees to be bound thereby.



4. The arbitration board shall be composed of one person selected by the taxpayer, one by the agency or agencies involved, and one member of the commission's arbitration panel. If the agencies involved are unable to agree on the person to be selected by them, such person shall be selected by lot from the total membership of the arbitration panel. The two persons selected for the board in the manner provided by the foregoing provisions of this paragraph shall jointly select the third member of the board. If they are unable to agree on the selection, the third member shall be selected by lot from among the total membership of the arbitration panel. No member of a board selected by lot shall be qualified to serve if he is an officer or employee or is otherwise affiliated with any party to the arbitration proceeding. Residents within the jurisdiction of a party to the arbitration proceeding shall not constitute affiliation within the meaning of this paragraph.

5. The board may sit in any state or subdivision party to the proceeding, in the state of the taxpayer's incorporation, residence or domicile, in any state where the taxpayer does business, or in any place that it finds most appropriate for gaining access to evidence relevant to the matter before it.

6. The board shall give due notice of the times and places of its hearings. The parties shall be entitled to be heard, to present evidence, and to examine and cross-examine witnesses. The board shall act by majority vote.

7. The board shall have power to administer oaths, take testimony, subpoena and require the attendance of witnesses and the production of accounts, books, papers, records, and other documents, and issue commissions to take testimony. Subpoenas may be signed by any member of the board. In case of failure to obey a subpoena, and upon application by the board, any judge of a court of competent jurisdiction of the state in which the board is sitting or in which the person to whom the subpoena is directed may be found may make an order requiring compliance with the subpoenas, and the court may punish failure to obey the order as a contempt. The provisions of this paragraph apply only in states that have adopted this Article.

8. Unless the parties otherwise agree, the expenses and other costs of the arbitration shall be assessed and allocated among the parties by the board in such manner as it may determine. The commission shall fix a schedule of compensation for members of arbitration boards and of other allowable expenses and costs. No officer or employee of a state or local government who serves as a member of a board shall be entitled to compensation therefor unless he is required on account of his service to forego the regular compensation attaching to his public employment, but any such board member shall be entitled to expenses.

9. The board shall determine the disputed apportionment or allocation and any matters necessary thereto. The determinations of the board shall be final for purposes of making the apportionment or allocation, but for no other purpose.

10. The board shall file with the commission and with each tax agency



represented in the proceeding: the determination of the board; the board's written statement of its reasons therefor; the record of the board's proceedings; and any other documents required by the arbitration rules of the commission to be filed.

11. The commission shall publish the determinations of boards together with the statements of the reasons therefor.

12. The commission shall adopt and publish rules of procedure and practice and shall file a copy of such rules and of any amendment thereto with the appropriate agency or officer in each of the party states.

13. Nothing contained herein shall prevent at any time a written compromise of any matter or matters in dispute, if otherwise lawful, by the parties to the arbitration proceedings.

#### ARTICLE X. ENTRY INTO FORCE AND WITHDRAWAL.

1. This compact shall enter into force when enacted into law by any seven states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof. The commission shall arrange for notification of all party states whenever there is a new enactment of the compact.

2. Any party state may withdraw from this compact by enacting a statute repealing the same. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

3. No proceeding commenced before an arbitration board prior to the withdrawal of a state and to which the withdrawing state or any subdivision thereof is a party shall be discontinued or terminated by the withdrawal, nor shall the board thereby lose jurisdiction over any of the parties to the proceeding necessary to make a binding determination therein.

#### ARTICLE XI. EFFECT ON OTHER LAWS AND JURISDICTION.

Nothing in this compact shall be construed to:

(a) Affect the power of any state or subdivision thereof to fix rates of taxation, except that a party state shall be obligated to implement Article III [paragraph] (2) of this compact.

(b) Apply to any tax or fixed fee imposed for the registration of a motor vehicle or any tax on motor fuel, other than a sales tax: provided that the definition of "tax" in Article VIII [paragraph] (9) may apply for the purposes of that Article and the commission's powers of study and recommendation pursuant to Article VI [paragraph] (3) may apply.

(c) Withdraw or limit the jurisdiction of any state or local court or administrative officer or body with respect to any person, corporation or other entity or subject matter, except to the extent that such jurisdiction is expressly conferred by or pursuant to this compact upon another agency or body.

(d) Supersede or limit the jurisdiction of any court of the United States.

## ARTICLE XII. CONSTRUCTION AND SEVERABILITY.

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any state or of the United States or of the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

**History:** En. Sec. 1, Ch. 17, L. 1969.

**Effective Date**

For effective date of this act, see Article X, paragraph 1.

**Compiler's Notes**

The following states have adopted the Multistate Tax Compact: Alabama, Arkansas, Florida, Hawaii, Idaho, Illinois, Michigan, Missouri, Nebraska, Nevada, New Mexico, North Dakota, Oregon, Texas, Utah, and Wyoming.

**Title of Act**

An act to adopt and implement the Multistate Tax Compact dealing with taxes paid by business firms.

**Cross-References**

Advisory council appointed to comply with compact, sec. 82A-1803(2).

Cities and towns—taxation and license, secs. 84-4701 to 84-4737.

Income tax, secs. 84-4901 to 84-4958.

Levy of taxes, secs. 84-3801 to 84-3810.

**84-6702. Montana compact commissioner—chairman of state board of equalization.** The chairman of the state board of equalization shall represent this state on the multistate tax commission.

**History:** En. Sec. 2, Ch. 17, L. 1969.

**84-6703. Alternate—member of state board of equalization.** The member representing this state on the multistate tax commission may be represented thereon by an alternate designated by him who must be a member of the state board of equalization.

**History:** En. Sec. 3, Ch. 17, L. 1969.

**84-6704. Advisory committee — members — reimbursement — meetings.** There is hereby established the multistate tax compact advisory committee composed of the member of the multistate tax commission representing this state or any alternate designated by him, the attorney general or his designee, and two members of the senate, one (1) from each of the two (2) major political parties appointed by the senate committee on committees, and two (2) members of the house of representatives, one (1) from each of the two (2) major political parties, appointed by the speaker of the house. The chairman shall be the member of the commission representing this state. Members of the commission who are members of the legislative assembly shall be reimbursed for actual and necessary expenses incurred on commission business from any funds appropriated to implement this compact. The committee shall meet on the call of its chairman or at

the request of a majority of its members, but in any event it shall meet not less than three (3) times in each year. The committee may consider any and all matters relating to recommendations of the multistate tax commission and the activities of the members in representing this state thereon.

**History:** En. Sec. 4, Ch. 17, L. 1969. Board of equalization to appoint advisory council, sec. 82A-1803(2).

**Cross-References**

Advisory committee abolished, sec. 82A-1806.

CHAPTER 68—TOBACCO TAX (CIGARETTES EXCLUDED)

**Section**

- 84-6801. Definitions.
- 84-6802. Direct tax on retail customer—advance payment—notice in seller's premises—amount of tax—products excepted.
- 84-6803. Wholesaler to precollect and pay tax.
- 84-6804. Wholesaler's sale without prepayment a misdemeanor—injunctive penalty.
- 84-6805. Unlawful sales and offers to sell—penalty.
- 84-6806. Wholesaler to retain five per cent defrayment—refunds.
- 84-6807. Rule-making power.

**84-6801. Definitions.** As used in this act, the following definitions shall apply unless the context otherwise requires:

(1) The word "board" shall mean the state board of equalization of the state of Montana.

(2) The word "person" shall mean any individual, firm, fiduciary, partnership, corporation, trust, organization or association, however formed.

(3) The word "cigarettes" shall mean any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.

(4) The words "sale" or "sell" shall mean and include any transfer for a consideration, exchange, barter, gift, offer for sale and distribution, in any manner, or by any means whatever of tobacco products, other than cigarettes.

(5) The word "wholesaler" shall mean any person who purchases tobacco products, other than cigarettes, directly from the manufacturer, or who purchases tobacco products, other than cigarettes, from any other person who purchases from the manufacturer, and who acquires such products for the purpose of bona fide sales to retail dealers, or who services retail outlets by the maintenance of an established place of business for the purchase of tobacco products, other than cigarettes, including, but not limited to, the maintenance of warehousing facilities for the storage and distribution of tobacco products. The word "retailer" shall mean any person other than a wholesaler who is engaged in the business of selling tobacco products to the ultimate consumer.

(6) The words "wholesale price" shall mean the established price for which a manufacturer sells a tobacco product, other than cigarettes, to a wholesaler or unclassified acquirer before any discount or other reduction.



History: En. Sec. 1, Ch. 12, Ex. L. 1969.

Title of Act

An act providing for the imposition of a tax on the sale of all tobacco products, not including cigarettes.

**84-6802. Direct tax on retail customer—advance payment—notice in seller's premises—amount of tax—products excepted.** (1) All taxes paid pursuant to the provisions of this section shall be exclusively presumed to be direct taxes on the retail consumer, precollected for the purpose of convenience and facility only. When the tax is paid by any other person such payment shall be considered as an advance payment and shall be added to the price of tobacco products, other than cigarettes, and recovered from the ultimate consumer or user. Any person selling tobacco products, other than cigarettes, at retail shall state or separately display in the premises where such products are sold, a notice of the tax included in the selling price and charged or payable pursuant to this section. The provisions of this section shall in no way affect the method of collection of such tax as hereinafter provided.

(2) There is hereby levied, imposed and assessed, and there shall be collected and paid to the state of Montana, upon tobacco products, other than cigarettes, sold or possessed in this state, a tax of twelve and one-half per cent (12-½%) of the wholesale price of such products to the wholesaler, excepting therefrom such said products as may be shipped from Montana and destined for retail sale and consumption outside the state of Montana.

History: En. Sec. 2, Ch. 12, Ex. L. 1969.

**84-6803. Wholesaler to precollect and pay tax.** The tax imposed shall be precollected and paid by the wholesaler to the board prior to the sale of tobacco products, other than cigarettes, to the purchaser from the wholesaler.

History: En. Sec. 3, Ch. 12, Ex. L. 1969.

**84-6804. Wholesaler's sale without prepayment a misdemeanor—injunctive penalty.** Any wholesaler who shall sell any tobacco products, other than cigarettes, without first making payment of the tax provided for by this act in the manner and at the time specified shall be guilty of a misdemeanor, and further shall be enjoined by an action pursued in the district court of the county of Lewis and Clark, Montana from making further sale of tobacco products, other than cigarettes, for a period not less than one (1) month nor more than one (1) year.

History: En. Sec. 4, Ch. 12, Ex. L. 1969.

**84-6805. Unlawful sales and offers to sell—penalty.** It shall be unlawful for any person, individual, firm or corporation to sell or offer to sell any tobacco products subject to this tax without the tax having been prepaid as provided for in this act. Violation of this section shall constitute a misdemeanor punishable by a fine of not more than five hundred dollars (\$500) or imprisonment for not more than six (6) months.

History: En. Sec. 5, Ch. 12, Ex. L. 1969.

**84-6806. Wholesaler to retain five per cent defrayment—refunds.** The taxes specified in this act that are paid by the wholesaler, shall be paid to the board in full less a five per cent (5%) defrayment for his collection and administrative expense and shall be deposited by the board in the long-range building sinking fund number 338766. Refunds of the tax paid shall be made as provided in section 84-726, R. C. M. 1947, in cases where the tobacco products purchased become unsalable.

**History:** En. Sec. 6, Ch. 12, Ex. L. 1969.

**84-6807. Rule-making power.** The board is authorized to adopt rules for the effective collection and refund of the tax imposed by this act.

**History:** En. Sec. 7, Ch. 12, Ex. L. 1969.

#### CHAPTER 69—CORPORATION INCOME TAX

##### Section

- 84-6901. Application of license and income taxes.
- 84-6902. Short title—Administration of act.
- 84-6903. Rate of tax imposed—income from sources within state defined.
- 84-6904. Offset for license taxes—income tax collected considered license tax.
- 84-6905. Information return—period for assessment of tax.
- 84-6906. License tax sections incorporated by reference.
- 84-6907. Employment of personnel—rules and regulations.
- 84-6908. Disposition of revenue.

**84-6901. Application of license and income taxes.** It is the intent of the legislative assembly that the corporation license tax shall be applied to all corporations subject to taxation under chapter 15, Title 84, R. C. M. 1947. The income tax provided by this act shall be applied to corporations that are not taxable under chapter 15, Title 84, R. C. M. 1947, but are taxable under an income tax.

**History:** En. Sec. 1, Ch. 82, L. 1971.

##### Cross-References

##### Title of Act

An act to subject corporations to an income tax if they are not subject to the corporation license tax; and providing an effective date.

- Corporation license tax, sec. 84-1501 et seq.
- Industrial income tax, sec. 84-4901 et seq.
- Multistate tax compact, sec. 84-6701.

**84-6902. Short title—administration of act.** This act shall be known as and may be cited as the "Corporation Income Tax" and it shall be administered by the state board of equalization.

**History:** En. Sec. 2, Ch. 82, L. 1971.

**84-6903. Rate of tax imposed—income from sources within state defined.** (1) There is hereby imposed upon every corporation for each taxable year an income tax at the rate specified in section 84-1501, R. C. M. 1947, upon its net income derived from sources within this state for taxable years beginning after December 31, 1970, other than income for any period for which the corporation is subject to taxation under chapter 15, Title 84, R. C. M. 1947, according to or measured by its net income.

(2) Income from sources within this state includes income from tangible or intangible property located in or having a situs in this state

and income from any activities carried on in this state, regardless of whether carried on in intrastate, or interstate or foreign commerce.

History: En. Sec. 3, Ch. 82, L. 1971.

**84-6904. Offset for license taxes—income tax collected considered license tax.** There shall be offset against the corporation income tax imposed for any period the amount of any tax imposed against it for the same period under chapter 15, Title 84, R. C. M. 1947. In the event that taxes, interest and penalties have been or will be assessed against, paid by or collected from a corporation under this chapter, which assessment, payment or collection should have been made under chapter 15, Title 84, R. C. M. 1947, such taxes, interest and penalties shall be considered as having been assessed, paid or collected under chapter 15, Title 84, R. C. M. 1947, as of the date they were made.

History: En. Sec. 4, Ch. 82, L. 1971.

**84-6905. Information return—Period for assessment of tax.** When a corporation formerly subject to tax under chapter 15, Title 84, R. C. M. 1947, becomes subject to tax under this act, it shall file an information return for the income year in which the change occurs. The tax for the year in which the change occurs will be assessed under chapter 15, Title 84, R. C. M. 1947, and not under this act. For years subsequent to the year in which the change occurs, the tax will be assessed under this act.

History: En. Sec. 5, Ch. 82, L. 1971.

**84-6906. License tax sections incorporated by reference.** The provisions of the following sections of chapter 15, Title 84, R. C. M. 1947, are incorporated into this act by reference and made a part hereof.

(1) That part of section 84-1501, R. C. M. 1947, which defines the term "corporation" and that part which specifies the classes of organizations whose income shall not be taxed.

(2) Sections 84-1501.4, 84-1502, 84-1503, 84-1504, 84-1505, 84-1505.1, 84-1506, 84-1507, 84-1508, 84-1508.1, 84-1508.2, 84-1509, 84-1510, 84-1512, 84-1513, 84-1516, 84-1517, and 84-1518, R. C. M. 1947, except that the term "gross income" shall be construed as excluding the net amount of interest income from valid obligations of the United States and except that wherever the words "tax," "license tax," "license fee," "corporation excise tax," or like words appear, referring to the tax imposed under chapter 15, Title 84, R. C. M. 1947, there shall be substituted the words "income tax."

History: En. Sec. 6, Ch. 82, L. 1971.

#### Compiler's Notes

Section 84-1501.4, referred to in sub-

division (2) and exempting state banks from taxation, was repealed by Sec. 2, Ch. 23, Laws 1971. Banks are now subject to taxation under sec. 84-1501.6.

**84-6907. Employment of personnel—rules and regulations.** The state board of equalization may employ personnel and adopt rules, regulations and forms as the board finds necessary to place this act in operation and to carry out its provisions.

History: En. Sec. 7, Ch. 82, L. 1971.



**84-6908. Disposition of revenue.** The net revenue from the tax imposed by this act shall be disposed of in the same manner as revenue from the corporation license tax as provided in section 84-1901, R. C. M. 1947.

**History:** En. Sec. 8, Ch. 82, L. 1971.

the act should be in effect from and after its passage and approval. Approved February 27, 1971.

**Effective Date**

Section 9 of Ch. 82, Laws 1971 provided

# REVISED CODES OF MONTANA

## VOLUME 6

### Part 1

### 1971 Cumulative Pocket Supplement

#### *Containing*

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE  
LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF  
REPLACEMENT VOLUME 6 (PART 1) OF  
THE 1947 REVISED CODES

#### AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 6  
(PART 1) THROUGH VOLUME 478, PACIFIC  
REPORTER (2ND SERIES)

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For index see pocket supplement to Replacement Volume 9

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### CHAPTER 3—SALE OF IMITATION INDIAN ARTICLES

Section 85-301. Definitions.

85-302. Imitation Indian articles to be clearly designated.

85-303. Designation of authentic Indian articles.

85-304. Violation as misdemeanor.

**85-301. Definitions.** As used in this act:

(1) "Indian" means a person who is enrolled or who is a lineal descendant of one enrolled upon an enrollment listing of the bureau of Indian affairs, or upon the enrollment listing of a recognized Indian tribe, domiciled in the United States.

(2) "Imitation Indian arts or crafts articles" means those made by machine, or made wholly out of synthetic or artificial materials, or articles which are not made by Indian labor or workmanship.

**History:** En. Sec. 1, Ch. 42, L. 1967.      tation American Indian arts and crafts articles.

**Title of Act**

An act regulating the retail sale of imi-

**85-302. Imitation Indian articles to be clearly designated.** No person shall distribute, sell, or offer for sale in this state any imitation American Indian arts or crafts articles unless the articles are at all times clearly and legibly designated as imitation.

**History:** En. Sec. 2, Ch. 42, L. 1967.

**85-303. Designation of authentic Indian articles.** Only those articles bearing a registered trade-mark or label of authentic Indian labor or workmanship may be deemed authentic Indian arts or crafts articles.

**History:** En. Sec. 3, Ch. 42, L. 1967.

**85-304. Violation as misdemeanor.** Any person who violates this act is guilty of a misdemeanor.

**History:** En. Sec. 4, Ch. 42, L. 1967.





## TITLE 86—TRUSTS AND USES

- Chapter 3. Trustee's obligations—sale, mortgage or lease of trust property, 86-327.  
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#### 86-103. (6785) Transfer to one for money paid by another, etc.

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Constructive trust would not be imposed on lands deeded son by aged mother in absence of evidence that son gained land by accident, mistake, undue influence, violation of trust or other wrongful act or by constructive fraud. *Bodine v. Bodine*, 149 M 29, 422 P 2d 650.

##### Transfer in Contemplation of Death

Where deceased, engaged in cattle partnership with his sister and her husband,

during his last illness transferred bank account and interest in cattle to his sister and her husband, obligating them to pay all bills and expenses surrounding his illness and transfer some money to deceased's son, the sister and her husband were involuntary trustees of the property transferred from which they had paid expenses of deceased's last illness. *Marshall v. Minlschmidt*, 148 M 263, 419 P 2d 486, 488.

### CHAPTER 3—TRUSTEE'S OBLIGATIONS—SALE, MORTGAGE OR LEASE OF TRUST PROPERTY

Section 86-327. Fiduciary permitted to hold property received though not qualified investment.

86-327. Fiduciary permitted to hold property received though not qualified investment. In the absence of express provisions to the contrary in the trust instrument, any fiduciary may hold during the life of the trust all securities or other property, real or personal, received into or acquired by the trust from any source, excepting such as are purchased by the fiduciary in administering the trust, even though such securities or other property are not qualified investments.

History: En. Sec. 1, Ch. 66, L. 1965.

##### Title of Act

An act relating to the retention by trustees of securities and other property received into the trust.

### CHAPTER 5—TRUSTS FOR BENEFIT OF THIRD PERSONS—OBLIGATIONS, POWERS AND RIGHTS OF TRUSTEES

Section 86-511. Compensation of trustee.

86-513. Trustee appointed by will, deed or agreement—income trust beneficiary—annual statement.

**86-511. (7918) Compensation of trustee.** When a declaration of trust, created by will or otherwise, is silent upon the subject of or the rate or amount of compensation, the trustee is entitled to such compensation as may be reasonable under the circumstances.

**History:** En. Sec. 3031, Civ. C. 1895; re-en. Sec. 5403, Rev. C. 1907; amd. Sec. 7918, R. C. M. 1921; amd. Sec. 1, Ch. 65, L. 1965. Cal. Civ. C. Sec. 2274. Field Civ. C. Sec. 1206.

**Amendment**

The 1965 amendment inserted "created

by will or otherwise"; inserted "or the rate or amount of" before "compensation"; substituted "such compensation as may be reasonable under the circumstances" for "the same compensation as an executor"; and deleted second and third sentences, for text of which see parent volume.

**86-513. Trustee appointed by will, deed or agreement—income trust beneficiary—annual statement.** The trustee or trustees appointed by any will, deed or agreement heretofore or hereafter executed shall mail or deliver at least annually to each income trust beneficiary a written itemized statement of all current receipts and disbursements made by the trustee of the funds of the trust, both principal and income, and upon the request of any such beneficiary shall furnish him an itemized statement of all property then held by such trustee, and may also file any such statement in the district court of the county in which the trustee or one of the trustees resides.

In addition thereto any such trustee or trustees, whenever it or they so desire, may file in the district court of the county in which the trustees or one of the trustees resides an intermediate account under oath showing:

- (1) the period covered by the account;
- (2) the total principal with which the trustee is chargeable according to the last preceding account or the inventory if there is no preceding account;
- (3) an itemized statement of all principal funds received and disbursed during such period;
- (4) an itemized statement of all income received and disbursed during such period, unless waived;
- (5) the balance of such principal and income remaining at the close of such period and how invested;
- (6) the names and addresses of all living beneficiaries, including contingent beneficiaries, of the trust, and a statement as to any such beneficiary known to be under legal disability;
- (7) a description of any possible unborn or unascertained beneficiary and his interest in the trust fund.

In addition thereto, after the time for termination of the trust shall have arrived, the trustee or trustees may file a final account in similar manner.

Upon the petition of any settlor or of any beneficiary of such a trust, after due notice thereof to the trustee, the district court in the county where the trustee or one of the trustees resides may direct the trustee or trustees thereof to file in said court such an account at any



time subsequent to one year from the day on which such a report was last filed, or if none, then after one (1) year from the inception of the trust.

When any such account shall have been filed, the clerk of the court where filed shall fix a return day therefor and issue a notice as provided for herein. If each of the beneficiaries and the guardians and guardians ad litem, if any, is personally served with a copy of the notice, whether within or outside the state of Montana, at least twenty-five (25) days prior to the return day, then no publication of the notice shall be required; otherwise the trustee or trustees shall cause notice as provided for herein to be given by publishing the same at least once a week for three (3) successive weeks preceding the return day, the first publication to be at least twenty-five (25) days preceding the return day, such publication to be in a newspaper of general circulation in the county, or if none, then in adjoining county. And in any event, at least twenty-five (25) days prior to the return day, a copy of the notice shall be either served upon each beneficiary not represented by guardian or guardian ad litem or mailed to each such beneficiary not so served at such beneficiary's address last known to the trustee; and shall be either served upon each guardian and guardian ad litem, or mailed to each such guardian and guardian ad litem not so served at such guardian's or guardian ad litem's address last known to the trustee. Proof of service of the notice may be made by affidavit, as provided for service of summons in civil actions, or by written admission of service signed by the person served. The notice shall state the time and place for the return day, the name or names of the trustee or trustees who have filed the account, that the account has been filed, that the court is asked to settle such account, and that any objections or exceptions thereto must be filed with the clerk of said court on or before such return day.

Upon or before the return day, any beneficiary of the trust may file his written objections or exceptions to the account filed or to any action of the trustee or trustees set forth therein. The court may appoint either the legal guardian of a beneficiary, or a guardian ad litem to represent the interest of any such beneficiary who is an infant or of unsound mind or otherwise legally incompetent, or who is yet unborn or unascertained, and such beneficiary shall be bound by any action taken by such representative. Every unborn or unascertainable beneficiary shall be concluded by any action taken by the court for or against any living beneficiary of the same class or whose interests are similar to the interests of such unborn or unascertainable beneficiary.

At the same time, or at some later day fixed by the court if so requested by one or more of the parties, the court, without the intervention of a jury and after hearing all the evidence submitted, shall determine the correctness of the account and the validity and propriety of all actions of the trustee or trustees set forth therein including the purchase, retention and disposition of any of the property and funds of the trust, and shall render its decree either approving or disapproving

the same or any part thereof, and, in addition, may surcharge the trustee or trustees for all losses, if any, caused by negligent or willful breaches of trust.

The decree so rendered shall be deemed final, conclusive and binding upon all the parties interested including all incompetent, unborn and unascertained beneficiaries of the trust, subject only to the right of appeal hereinafter stated.

The decree so rendered shall be a final order from which any party in interest may appeal as in civil actions to the district court of the state of Montana.

This chapter shall not apply to resulting trusts, constructive trusts, business trusts where certificates of beneficial interest are issued to the beneficiaries, investment trusts, voting trusts, insurance trusts prior to the death of the insured, trusts in the nature of mortgages or pledges, trusts created by judgment or decree of a federal court or of the district court when not sitting in probate, liquidation trusts or trusts for the sole purpose of paying dividends, interest or interest coupons, salaries, wages or pensions; nor shall this chapter apply to executors, administrators or guardians.

The settlor of any trust governed by this chapter may waive any or all of the provisions of this act requiring periodical statements to beneficiaries or may add additional duties in the instrument creating the trust; and any beneficiary entitled to an accounting under this act may waive such an accounting by a separate instrument delivered to the trustee or trustees.

**History:** En. Sec. 1, Ch. 24, L. 1969.

#### CHAPTER 6—EXTINGUISHMENT, REVOCATION AND VACATION OF TRUSTS—SUCCESSION

#### 86-601. (7920) Trust—how extinguished.

##### **Life Income**

Where sole purpose and object of trust were payment of income for life to testator's wife, mother, sister and son, and such obligations were either fulfilled or

no longer possible of fulfillment, trial court properly terminated trust. Testamentary Trust of Child, 153 M 349, 457 P 2d 447.

## TITLE 87—UNEMPLOYMENT COMPENSATION

Chapter 1. The unemployment compensation law, 87-103 to 87-106, 87-109 to 87-111, 87-117, 87-118, 87-120, 87-129, 87-136, 87-145, 87-148, 87-149.

### CHAPTER 1—THE UNEMPLOYMENT COMPENSATION LAW

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##### Compiler's Notes

Section 1, Ch. 132, Laws of 1969, amended section 87-117 to change the

name of the unemployment compensation commission to the employment security commission.

**87-103. Benefits.** (a) Payment of benefits. Benefits are payable from the fund to any individual who is or becomes unemployed and eligible for benefits as is herein prescribed; provided, however, that wages earned for services performed as an employee representative as defined in the Railroad Unemployment Insurance Act (52 Stat. 1094), or for services performed for an employer, as defined in said act, shall not be included for the purposes of determining eligibility or weekly benefit amount under this act. All benefits shall be paid through public employment offices in the state of Montana, or other agencies designated by the commission, in accordance with such rules and regulations as the commission may prescribe.

(b) Weekly benefit amount. Effective July 1, 1971, the maximum weekly benefit amount shall be forty-seven dollars (\$47) and the minimum weekly benefit amount shall be twelve dollars (\$12).

Effective January 1, 1972, the maximum weekly benefit amount shall be fifty-two dollars (\$52).

Any individual whose benefit year begins on or after July 1, 1971, shall receive as his weekly benefit amount, an amount equal to one twenty-sixth ( $1/26$ ) of his total wages for insured work paid during the calendar quarter of his base period in which his wages were highest. Such



weekly benefit amount, if not a multiple of one dollar (\$1), shall be rounded to the nearest multiple of one dollar (\$1).

(c) Qualifying wages. To qualify as an insured worker an individual must have been paid wages for insured work in his base period totaling not less than one and one-half (1½) times his high-quarter wages during his base period including the high quarter.

(d) and (e). \* \* \* [Same as parent volume.]

**History:** En. Sec. 3 (a), (b), (c), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 1, Ch. 191, L. 1953; amd. Sec. 1, Ch. 238, L. 1955; amd. Sec. 1, Ch. 140, L. 1957; amd. Sec. 1, Ch. 156, L. 1961; amd. Sec. 1, Ch. 269, L. 1963; amd. Sec. 1, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 169, L. 1971.

#### Amendments

The 1969 amendment made substantial deletions at the beginning and end of the first sentence in subsection (a); rewrote the benefits schedule, generally increasing the amounts payable; increased the maximum weekly benefit from \$34 to \$42; re-

duced the minimum weekly benefit from \$15 to \$13; rewrote subsection (c) to substitute the requirement of earnings totaling one and one-half times the high-quarter earnings for a requirement of \$100 in earnings other than in the high quarter; and made numerous minor changes in phraseology.

The 1971 amendment completely rewrote subsections (b) and (c), slightly reducing benefits in the lower wage brackets and slightly increasing benefits in the higher wage brackets, reducing the minimum weekly benefit from \$13 to \$12, and increasing the maximum weekly benefit from \$42 to \$47 effective July 1, 1971 and to \$52 effective January 1, 1972.

**87-104. Duration of benefits.** The maximum total amount of benefits payable to any eligible individual during any benefit year shall be:

(a)(1) Thirteen (13) times his weekly benefit amount if he is qualified as an insured worker as defined in section 87-103 (c), and does not qualify under subsection (2) or (3) below.

(2) Twenty (20) times his weekly benefit amount if in addition to meeting the requirements of section 87-103 (c), he has been paid wages of one hundred dollars (\$100) or more for insured work in each of two (2) quarters in his base period other than the quarter in which his wages were highest.

(3) Twenty-six (26) times his weekly benefit amount if in addition to meeting the requirement of section 87-103 (c), he has been paid wages of one hundred dollars (\$100) or more for insured work in each of three (3) quarters in his base period other than the quarter in which his wages were highest.

(4) Extended benefits if he is qualified as provided under the provisions of this subsection.

(a) Definitions.—As used in this section, unless the context clearly requires otherwise—

(1) "Extended benefit period" means a period which

(A) begins with the third week after whichever of the following weeks occurs first:

(i) a week for which there is a national "on" indicator, or

(ii) a week for which there is a state "on" indicator; and

- (B) ends with either of the following weeks, whichever occurs later:
- (i) the third week after the first week for which there is both a national "off" indicator and a state "off" indicator, or
  - (ii) the thirteenth consecutive week of such period;

Provided, that no extended benefit period may begin by reason of a state "on" indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this state.

(2) There is a "national 'on' indicator" for a week if the U. S. Secretary of Labor determines that for each of the three (3) most recent completed calendar months ending before such week, the rate of insured unemployment (seasonally adjusted) for all states equaled or exceeded four and one-half per cent ( $4\frac{1}{2}\%$ ).

(3) There is a "national 'off' indicator" for a week if the U. S. Secretary of Labor determines that for each of the three (3) most recent completed calendar months ending before such week, the rate of insured unemployment (seasonally adjusted) for all states was less than four and one-half per cent ( $4\frac{1}{2}\%$ ).

(4) There is a "state 'on' indicator" for this state for a week if the commission determines, in accordance with the regulations of the U. S. Secretary of Labor, that for the period consisting of such week and the immediately preceding twelve (12) weeks, the rate of insured unemployment (not seasonally adjusted) under this act—

(A) equaled or exceeded one hundred and twenty per cent (120%) of the average of such rates for the corresponding thirteen (13) week period ending in each of the preceding two (2) calendar years, and

(B) equaled or exceeded four per cent (4%).

(5) There is a "state 'off' indicator" for this state for a week if the commission determines, in accordance with the regulations of the U. S. Secretary of Labor, that for the period consisting of such week and the immediately preceding twelve (12) weeks, the rate of insured unemployment (not seasonally adjusted) under this act—

(A) was less than one hundred and twenty per cent (120%) of the average of such rates for the corresponding thirteen (13) week period ending in each of the preceding two (2) calendar years, or

(B) was less than four per cent (4%).

(6) "Rate of insured unemployment," for purposes of paragraphs (4) and (5) of this subsection, means the percentage derived by dividing

(i) the average weekly number of individuals filing claims in this state for weeks of unemployment with respect to the most recent thirteen (13) consecutive-week period, as determined by the commission on the basis of his reports to the U. S. Secretary of Labor, by

(ii) the average monthly employment covered under this act for the first four (4) of the most recent six (6) completed calendar quarters ending before the end of such thirteen (13) week period.

(7) "Regular benefits" means benefits payable to an individual under this act or under any other state law (including benefits payable

to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) other than extended benefits.

(8) "Extended benefits" means benefits (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) payable to an individual under the provisions of this section for weeks of unemployment in his eligibility period.

(9) "Eligibility period" of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

(10) "Exhaustee" means an individual who, with respect to any week of unemployment in his eligibility period:

(A) has received, prior to such week, all of the regular benefits that were available to him under this act or any other state law (including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C. chapter 85) in his current benefit year that includes such week;

Provided, that, for the purposes of this subparagraph an individual shall be deemed to have received all of the regular benefits that were available to him although (i) as a result of a pending appeal with respect to wages that were not considered in the original monetary determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits.

(B) his benefit year having expired prior to such week, has no, or insufficient, wages on the basis of which he could establish a new benefit year that would include such week; and

(C) (i) has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, the Automotive Products Trade Act of 1965 and such other federal laws as are specified in regulations issued by the U. S. Secretary of Labor; and (ii) has not received and is not seeking unemployment benefits under the unemployment compensation law of the Virgin Islands or of Canada; but if he is seeking such benefits and the appropriate agency finally determines that he is not entitled to benefits under such law he is considered an exhaustee.

(11) "State law" means the unemployment insurance law of any state, approved by the U. S. Secretary of Labor under section 3304 of the Internal Revenue Code of 1954.

(b) Effect of state law provisions relating to regular benefits on claims for, and the payment of, extended benefits.—Except when the result would be inconsistent with the other provisions of this section, as provided in the regulations of the commission, the provisions of this act which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits.

(c) Eligibility requirements for extended benefits.—An individual shall be eligible to receive extended benefits with respect to any week of unemployment in this eligibility period only if the commission finds that with respect to such week:



(1) he is an "exhaustee" as defined in subsection (a)(10),

(2) he has satisfied the requirements of this act for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits.

(d) Weekly extended benefit amount.—The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be an amount equal to the weekly benefit amount payable to him during his applicable benefit year.

(e) Total extended benefit amount.—The total extended benefit amount payable to any eligible individual with respect to his applicable benefit year shall be the least of the following amounts:

(1) fifty per cent (50%) of the total amount of regular benefits which were payable to him under this act in his applicable benefit year;

(2) thirteen (13) times his weekly benefit amount which was payable to him under this act for a week of total unemployment in the applicable benefit year.

(f)(1) Beginning and termination of extended benefit period.—Whenever an extended benefit period is to become effective in this state (or in all states) as a result of a state or a national "on" indicator, or an extended benefit period is to be terminated in this state as a result of state and national "off" indicators, the commission shall make an appropriate public announcement.

(2) Computations required by the provisions of subsection (a)(6) shall be made by the commission, in accordance with regulations prescribed by the U. S. Secretary of Labor.

(3) The effective date of subsection (a)(4) of this section shall be January 1, 1972.

(b) An individual disqualified by and pursuant to section 87-106, subsections (a), (b) and (c), shall have his maximum weekly duration reduced by the number of weeks equal to the number of weeks of disqualification.

**History:** En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971.

#### Amendments

The 1969 amendment designated the former section as subdivision "(a)," substituted "subsection (2) or (3)" for "subsection (b) or (c)" at the end of subsection (1); redesignated former subsections (a), (b) and (c) as subsections (1), (2) and (3); and added subdivision (b).

The 1971 amendment inserted subsection (a) (4) and made minor changes in style.

**87-105. Benefit eligibility conditions.** An unemployed individual shall be eligible to receive benefits for any week of total unemployment within his benefit year; only if the commission finds that—

(a) to (d). \* \* \* [Same as parent volume.]

(e) An individual who received benefits during a benefit year must perform services for remuneration after the beginning of that year as a

condition for receiving benefits in a second benefit year. The service may be in either covered or noncovered employment, however, the individual must have earned the lesser of three-thirteenths (3/13) of his high quarter of his second benefit year or six (6) times his weekly benefit amount of that same year.

(f) Benefits based on service in employment defined in section 87-148 (j)(6) and (7) and section 87-110 (d) shall be payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the basis of other service subject to this act; except that benefits based on service in an instructional, research, or principal administrative capacity in an institution of higher education (as defined in section 87-148 (n)) shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years, or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or contracts to perform services in any such capacity for any institution or institutions of higher education for both such academic years or both such terms.

**History:** En. Sec. 4, Ch. 137, L. 1937; amd. Sec. 2, Ch. 137, L. 1939; amd. Sec. 2, Ch. 164, L. 1941; amd. Sec. 1, Ch. 233, L. 1943; amd. Sec. 1, Ch. 190, L. 1945; amd. Sec. 3, Ch. 191, L. 1953; amd. Sec. 2, Ch. 238, L. 1955; amd. Sec. 2, Ch. 140, L. 1957; amd. Sec. 3, Ch. 156, L. 1961; amd. Sec. 1, Ch. 390, L. 1971.

#### Amendments

The 1971 amendment added subdivisions (e) and (f); and made a minor change in phraseology.

#### Burden of Proof

Unemployment compensation claimant has the burden of showing that he is not disqualified from the receipt of benefits. *Ollila v. Reeder*, 148 M 134, 417 P 2d 473, 475.

#### Type of Work

Under statute providing that claimant must be available for work and seeking work, claimant was not eligible where all his applications were either for work in which he had no experience or work which he had no prospect of securing; claimant voluntarily removed himself from only then-existing labor market in area for which he was qualified by refusal to accept farm or ranch work because he despised it. *Noone v. Reeder*, 151 M 248, 441 P 2d 309.

#### Withdrawal from Labor Market

Claimant, who voluntarily withdrew himself from the active labor market, rendered himself ineligible to receive unemployment compensation benefits. *Ollila v. Reeder*, 148 M 134, 417 P 2d 473, 475.

**87-106. Disqualification for benefits.** An individual shall be disqualified for benefits—

(a) If he has left work without good cause attributable to the employment for a period of not less than two (2) nor more than five (5) weeks (in addition to and immediately following the waiting period), as determined by the commission according to the circumstances in each case.

(b) If he has been discharged:

(1) For misconduct connected with his work, or affecting his employment, for a period of not less than two (2) nor more than nine (9) weeks (in addition to and immediately following the waiting period), as determined by the commission in each case according to the seriousness of the misconduct.

(2) For gross misconduct connected with his work or committed on the employer's premises, as determined by the commission, for a period of twelve (12) months.

(c) and (d). \* \* \* [Same as parent volume.]

(e) For any week with respect to which he is receiving or has received payment in the form of—

(1) Wages in lieu of notice or separation or termination allowance;

(2) Compensation for disability under the Workmen's Compensation Law or the Occupational Disease Law of this or any other state or under a similar law of the United States, provided, however, that when an injured claimant has ceased to draw compensation benefits and shall have returned to the labor market, he shall then be entitled to receive unemployment compensation benefits under this title, if he shall be otherwise qualified. Provided further, that compensation which is received as a payment for a permanent partial disability shall not be computed to be spread over a period of weeks in advance so as to bar the recipient from receiving unemployment compensation benefits under this title, provided the recipient has returned to the labor market and is otherwise qualified;

(3) Benefits under the Railroad Unemployment Insurance Act or any state unemployment compensation act or similar laws of any state or of the United States. This disqualification does not apply to any week with respect to which an individual is receiving or has received benefits under an unemployment compensation law of another state or of the United States, if such benefits are paid pursuant to section 87-129.

Receipt of any wages, compensation or benefits as set forth in subsection (1), (2), or (3) above, after payment of unemployment benefits, and with respect to the same week for which unemployment benefits were received, will thereupon require such individual to repay such unemployment benefits and the commission may collect such unemployment benefits in the same manner as provided for collection of benefits under section 87-145 (d).

(f) During the school year (within the autumn, winter and spring seasons of the year) or the vacation periods within such school year or during any prescribed school term if claimant is a student regularly attending an established educational institution. Notwithstanding any other provisions in this subsection, no otherwise eligible individuals shall be denied benefits for any week because he is in training approved by the commission, nor shall such individual be denied benefits with respect to any week in which he is in training approved by the commission by reason of the application of provisions in subsection (c) of this section or the application of provisions in section 87-105 (c).

(g) Where retired and entitled to receive retirement compensation in excess of one hundred dollars (\$100.00) per calendar month paid in whole or in part from funds furnished by an employing unit, such disqualification to be applied as follows: All wages earned by such individual in the employment from which he has been retired shall not be considered or included in determining his wage credits or weekly benefit



amount under sections 87-103 and 87-105. This disqualification does not extend to the receipt of benefits under the Federal Social Security Act, as amended.

(h) For any week wherein claimant leaves her most recent employment during pregnancy, and due to such pregnancy, and such disqualifications shall continue through the period of pregnancy unless claimant presents evidence of her physical ability to work at such employment. At any time after the seventh month of pregnancy a claimant, to establish eligibility, must present evidence of physical ability to work at such employment. Further, at any time during the first two (2) months following childbirth, a claimant, to establish eligibility, must present evidence of her physical ability to work at such employment. In any of the cases set forth hereinbefore, such evidence of eligibility must be in the form of certificate of a duly licensed physician that such claimant is physically able to work at her most recent employment, and such evidence must be presented as often as requested by the commission.

**History:** En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, L. 1971.

### Compiler's Notes

This section was amended twice in 1971, once by Ch. 38 and once by Ch. 415. Chapter 38 was approved by the governor on February 20, 1971, and Ch. 415 on March 18, 1971. Chapter 415 incorporated the changes made by Ch. 38. Therefore, the compiler has used the text of Ch. 415 above.

The compiler has used the capitalized subparagraph designations in subdivision (c) (2) as they appeared prior to 1971 amendment.

### Amendments

The 1965 amendment inserted "in excess of one hundred dollars (\$100.00) per calendar month" in the first sentence of subd. (h); substituted "retired individual" for "individual after such retirement" near the beginning of the present third sentence of subd. (h); inserted "and entitled to receive retirement compensation," following "individual is retired" in the present third sentence of subd. (h); and made a minor change in punctuation.

The 1967 amendment inserted in subdivision (e) (3) a second paragraph reading: "Compensation as set forth in subsection (2) above, which is received as a lump-sum payment for a permanent disability shall not be computed to be spread

over a period of weeks in advance so as to bar the recipient from receiving benefits under this act for any week except the one in which the lump-sum payment is made, providing recipient has earned sufficient new wage credits following settlement."

The 1969 amendment, in subdivision (a), substituted "nor" for "or" in the first sentence; in the second paragraph of item (e) (3), substituted "the date of injury" for "settlement"; and in subdivision (h), substituted "87-103 and 87-105" for "87-103 or 87-105."

Chapter 38, Laws of 1971, added the two provisos to subdivision (e) (2); and deleted the paragraph inserted in subdivision (e) (3) by the 1967 amendment.

Chapter 415, Laws of 1971, included the changes made by Ch. 38; deleted the second sentence of subdivision (a); deleted the second paragraph of subdivision (b) (2); added the second sentence to subdivision (f); deleted former subdivisions (g) and (j); redesignated former subdivisions (h) and (i) as subdivisions (g) and (h); deleted "and no benefit \* \* \* in good faith" after "87-105" in the first sentence of subdivision (g), formerly subdivision (h); deleted the last sentence of subdivision (h), formerly subdivision (i); and made a minor change in punctuation.

### Prior Workmen's Compensation Settlement

Claimant was barred from receiving unemployment compensation benefits by reason of prior lump-sum workmen's compensation settlement during the period which lump-sum settlement was intended to cover. *Keller v. Reeder*, 149 M 322, 425 P 2d 830.

**87-108. Procedure and appeals.****Findings of Commission**

Finding of unemployment compensation commission that claimant was not available for and seeking work as required by section 87-105 was proper where the evidence showed that claimant quit his job to protect his social security retirement benefits; he knew that his employer would not rehire him if he failed to report off from work; he went to Minnesota to take a rest; and he failed to seek full-time em-

ployment. *Ollila v. Reeder*, 148 M 134, 417 P 2d 473, 475.

**Scope of Judicial Review**

Under that portion of statute relating to court review, findings of fact by commission, if supported by substantial evidence, are conclusive and confine scope of judicial review to questions of law. *Noone v. Reeder*, 151 M 248, 441 P 2d 309.

**87-109. Contributions.** (a) Payment. (1) Contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this act, with respect to wages, as defined in section 87-149 (c), paid for employment (as defined in this act) occurring during such calendar year. Such contributions shall become due and be paid by each employer to the commission for the fund in accordance with such regulations as the commission may prescribe and shall not be deducted, in whole or in part, from the wages of individuals in his employ.

(2). \* \* \* [Same as parent volume.]

(b) Rate of contribution.

(1) Each employer shall pay contributions at the rate of three and one-tenth per centum (3.1%) of wages, as defined in section 87-149 (c) paid by him with respect to such employment, except as provided in subsection (c) of this section.

Nonprofit organizations defined in section 87-148 (j)(7) may elect to make payments in lieu of contributions; the state and its political subdivisions specifically covered by this act and those electing coverage shall make payments in lieu of contributions.

(2) Employers required or electing to make payments in lieu of contributions shall pay into the fund an amount equivalent to the full amount of regular benefits plus one-half ( $\frac{1}{2}$ ) of the amount of extended benefits paid to individuals based on wages paid by such employing unit. If benefits paid an individual are based on wages paid by both such employer and one (1) or more other employers, the amount payable by such employer to the fund shall bear the same ratio to total benefits paid to the individual as the base period wages paid to the individual by such employer bear to the total amount of base period wages paid to the individual by all his base period employers. If the base period wages of an individual include wages from more than one (1) such employer, the amount to be paid into the fund with respect to the benefits paid to such individual shall be prorated among the liable employers in proportion to the wages paid to such individual by each such employer during the base period. The amount of payment required from such employers shall be ascertained by the commission quarterly and shall become due and payable by such employer quarterly as directed in this act. Penalty and interest for delinquency shall be assessed such employers as specified in section 87-135.

(3) After December 31, 1971, any nonprofit organizations as defined in section 87-148 (j)(7) electing to become liable for payments in lieu of contributions for a period of not less than one (1) year must file with the commission a written notice of its election not later than thirty (30) days immediately following the date of the determination of subjectivity to this act. This election shall not be terminable by the organization for that and the next year. If the nonprofit organization is delinquent in making payments in lieu of contributions, the commission may terminate the election to make payments in lieu of contributions as of the beginning of the next taxable year, and such termination shall be effective for that and the next taxable year.

(4) Payments in lieu of contributions by the state and its political subdivisions shall be an amount equivalent to the amount of benefits paid to individuals based on wages paid by the state and its political subdivisions. The method of determining benefits attributable shall be the same as that set forth in subsection (b)(2) of this section. The amount of payments shall be paid in such manner as the commission may prescribe.

(c) Experience rating.

The commission shall for each calendar year, classify employers in accordance with their actual contributions and unemployment experience and shall determine for each employer the rate of contributions which shall apply to him throughout the calendar year in order to reflect said experience and classification. The commission shall apply such form of classification or experience rating system which is best calculated to rate individually and most equitably the employment for each employer and to encourage the stabilization of employment.

In making such classification, the commission shall take account, each to an equal extent, of the following factors relating to the unemployment hazard shown by each employer on the basis of (1) average annual net percentage declines in total payrolls for the last three (3) years prior to computation date; (2) number of years the employer has paid contributions; and (3) chargebacks to the individual employer account upon the last employer basis. The computation date is hereby fixed as of the close of business on June 30 of the preceding calendar year.

The rates for the first calendar quarter of calendar year 1972 and thereafter, except as hereinafter provided, shall be so fixed that they would, if applied to all employers (except those employers making payments in lieu of contributions) and their total taxable annual payrolls for the preceding calendar year, have yielded total paid contributions equaling approximately one and five-tenths per centum (1.5%) of the total of all such payrolls.

The commission shall determine the contribution rate applicable to each employer for any calendar year subject to the following limitations:

(1) Each employer's rate shall be three and one-tenth per centum (3.1%) unless and until there have been three (3) years prior to the computation date throughout which the employer has paid contribu-



tions at the maximum tax rate set by law for each of such years and has reported and paid contributions during each of the three (3) calendar years immediately preceding the computation date and with respect to such three (3) calendar years has filed all contribution reports prescribed by the commission and paid all contributions due with respect to the three (3) calendar years before March 31 of the rate year. Upon payment of past-due contributions the commission shall, for the current year, compute a rate for the next succeeding quarter following the payment.

(2) The classified contribution rates for the calendar year 1969, and thereafter, except as hereinafter provided, shall be: five-tenths of one per centum (.5%), seven-tenths of one per centum (.7%), nine-tenths of one per centum (.9%), one and one-tenth per centum (1.1%), one and three-tenths per centum (1.3%), one and five-tenths per centum (1.5%), one and seven-tenths per centum (1.7%), one and nine-tenths per centum (1.9%), two and one-tenth per centum (2.1%), two and three-tenths per centum (2.3%), two and five-tenths per centum (2.5%), two and seven-tenths per centum (2.7%), two and nine-tenths per centum (2.9%), and three and one-tenth per centum (3.1%).

(3) No employer shall be assigned a classified contribution rate higher than the second classified rate above the rate which was assigned to him for the last preceding calendar year except for the year 1961 and further as hereinafter provided. This subsection shall not apply when the employer's chargeback ratio exceeds one hundred per cent (100%).

(4) An employer whose benefit payments (charged as most recent employer) in the last three (3) years preceding the computation date exceeded the amount of his contributions for those years, may have the option of making a voluntary contribution to the unemployment compensation fund to cancel the amount by which the benefit payments charged to him under section 87-109 (c) during the last three (3) completed fiscal years exceed his contributions for the same three (3) years. Such voluntary contribution shall be applied first to cancel the amount by which benefits exceed contributions in the earliest of the three (3) years preceding the computation date, any remaining to cancel the excess in the second earliest year preceding the computation date, and any further remaining to cancel the excess in the most recent year preceding the computation date. Whenever the benefit payments charged to an eligible employer in the last three (3) fiscal years exceed his contributions for the same period, the commission shall notify him of the amount of such excess and the rate which would be applicable to him for the ensuing calendar year, if he exercises the option. Such employer must exercise the option of making the voluntary contribution allowed by this section within thirty (30) days after receipt of such notice.

(5) Rates as fixed by the commission shall stand and be in effect unless and until the cash reserves in the unemployment compensation trust fund at any time in the future fall below, and remain below, eighteen million dollars (\$18,000,000) continuously for a period of one (1) year, then employer rates effective at the beginning of the next suc-

ceeding calendar quarter shall be so fixed that they would, if applied to all employers and their total taxable annual payrolls for the preceding calendar year, have yielded total paid contributions equaling approximately two per centum (2%) of the total of all such payrolls, and shall continue at the two per centum (2%) average rate until cash reserves in the unemployment compensation trust fund exceed twenty-six million dollars (\$26,000,000) at which time all employer rates shall again be so fixed to bring an average return of one and five-tenths per centum (1.5%) as in this section hereinabove provided; if reserves remain below eighteen million dollars (\$18,000,000) continuously for a period of two (2) years, then the contribution rate of all employers subject to this act shall return to a uniform rate of three and one-tenth per centum (3.1%) effective at the beginning of the next succeeding calendar quarter, and shall continue at the three and one-tenth per centum (3.1%) rate until cash reserves in the unemployment compensation trust fund exceed twenty-six million dollars (\$26,000,000) at which time all employer rates shall again be so fixed to bring an average return of one and five-tenths per centum (1.5%) as in this section hereinabove provided.

(6). \* \* \* [Same as parent volume.]

(7) The commission shall by regulation provide for the proper notification of employers of the classification and rate of contribution applicable to their accounts. Such notification shall be final for all purposes unless and until such employer files a written request with the commission for a redetermination or hearing thereon within thirty (30) days after receipt of such notice.

(8) "Annual total payroll" means the total of the four (4) quarters of total payrolls of an employer preceding the computation date as fixed herein.

(9) No employer's account shall be charged with benefits paid to any claimant in determining the contribution rate of such employer;

(A) If the claimant has been disqualified under section 87-106 (a), (b), (g), or (h), as a result of separation from such employer;

(B) If the claimant left work for nondisqualifying reasons as provided in section 87-106 (a);

(C) Unless the employer has had notice of the claim for the benefits and has been given opportunity for hearing as an interested party in the manner provided in sections 87-107 and 87-108. Written notice of any hearing shall be mailed to employer not less than ten (10) days prior to the date set.

(d) The provisions of this act requiring the payment of contributions by employers subject to this act shall apply only to wages paid up to and including three thousand dollars (\$3,000) by an employer to an employee with respect to employment during any calendar year preceding the year 1972.

Payment of contributions shall apply only to wages paid up to and including four thousand two hundred dollars (\$4,200) by an employer to an employee with respect to employment during the calendar year 1972 and thereafter.

## (e) Contribution appeals.

A review of a decision or determination involving contribution liability, contribution rate or application for refund shall be made by the commission or its authorized representative, hereinafter referred to as a deputy, in accordance with the provisions of this act and the decision of the deputy conducting the review shall be deemed to be the decision of the commission. The commission or the deputy conducting the review may refer the matter to an appeal referee, may decide the application for review on the basis of such facts and information as may be obtained or may hear argument to secure further facts. After such review, notice of the decision shall be given to the employing unit. Such decision made pursuant to such review shall be deemed to be the final decision of the commission unless the employing unit or any other such interested party, within five (5) calendar days after delivery of such notification or within seven (7) calendar days after such notification was mailed to his last known address, files an appeal from this decision. Such appeal will be referred to an appeal referee who shall make his decisions with respect thereto in accordance with the procedure prescribed in section 87-107 (c).

**History:** En. Sec. 7, Ch. 137, L. 1937; amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. 1947; amd. Sec. 5, Ch. 191, L. 1953; amd. Sec. 2, Ch. 164, L. 1955; amd. Sec. 3, Ch. 171, L. 1957; amd. Sec. 5, Ch. 156, L. 1961; amd. Sec. 3, Ch. 269, L. 1963; amd. Sec. 4, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 117, L. 1971.

**Amendments**

The 1969 amendment made numerous changes in phraseology; rewrote subdivision (b) (1) which formerly provided for employer contributions of 1.8% for 1937 employment and 2.7% for subsequent employment; in subsection (c), deleted an apparently superfluous third paragraph which is shown in brackets in the parent volume; raised the rates stated in the fourth paragraph, now the third paragraph, from 1.5% to 1.6%; in subdivision (c) (1), substituted 3.1% rate for 2.7% rate, "date" for "rate" and "maximum tax rate set by law for each of such years" for "rate of two and seven-tenths (2.7) per centum"; in subdivision (c) (2), substituted 1969 rates for separate rates for 1947 and thereafter and 1953 and thereafter; in subdivision (c) (4), substituted 3.1% rate for 2.7% rate; in subdivision (c) (5), substituted reference to 1.6% and 3.1% rate for references to 1.5% and 2.7% rate; and inserted subdivision (c) (9).

The 1971 amendment added the second paragraph to subdivision (b) (1); added subdivisions (2), (3) and (4) to subsection (b); substituted "total payrolls" for "taxable payrolls" in clause (1) in the second paragraph of subsection (c), and

also in two places in subdivision (c) (8); substituted "first calendar quarter of calendar year 1972" for "second calendar quarter of calendar year 1969" in the third paragraph of subsection (c); inserted "(except those employers making payments in lieu of contributions)" in the third paragraph of subsection (c); reduced the rate specified at the end of the third paragraph of subsection (c) from 1.6% to 1.5%; reduced the time required by subdivision (c) (1) from five to three years; added "and has reported and paid contributions during each of the three (3) calendar years immediately preceding the computation date and with respect to such three (3) calendar years has filed all contribution reports prescribed by the commission and paid all contributions due with respect to the three (3) calendar years before March 31 of the rate year" to the end of the first sentence of subdivision (c) (1); added the second sentence to subdivision (c) (1); added the second sentence to subdivision (c) (3); deleted "No employer's rate shall be fixed below three and one-tenth (3.1) per centum whose benefit payments charged as most recent employer have, in the last three (3) years preceding the computation date, exceeded the amount of his contributions for those years" from the beginning of subdivision (c) (4); inserted "An employer whose benefit payments (charged as most recent employer) in the last three (3) years preceding the computation date exceeded the amount of his contributions for those years" at the beginning of subdivision (c) (4); deleted from the end of subdivision (c) (4) a



clause reading "otherwise his rate for the ensuing calendar year shall be fixed at three and one-tenth (3.1) per centum"; reduced the average return rate specified in two places in subdivision (c) (5) from 1.6% to 1.5%; deleted from the end of subdivision (c) (7) a sentence reading "The provisions of section 87-107 applicable to appeals under claims procedure shall apply with like purpose and effect, and be applicable to hearings and request for redeterminations of classifications and rates of contribution filed by employers hereunder"; inserted subdivisions (A) and (B) in subdivision (c) (9); designated the latter part of former subdivision (c) (9) as subdivision (c) (9) (C); deleted "Wages in excess of three thousand dollars (\$3,000.00)" at the beginning of subsection (d); added "preceding the year 1972" at the end of the first paragraph of subsection (d); added the second paragraph of subsection (d) and all of subsection (e); and made minor changes in phraseology and punctuation.

#### Separability Clause

Section 5 of Ch. 4, Ex. Laws 1969 read "If any clause, sentence, section, paragraph or part of this act shall for any reason be adjudged by any court of compe-

tent jurisdiction to be invalid or inoperative, such judgment shall not affect, impair, or invalidate the remainder of this act but shall be confined in its operation to the clause, sentence, section, paragraph or part directly adjudged to be invalid or inoperative."

#### Repealing Clause

Section 6 of Ch. 4, Ex. Laws 1969 repealed all acts and parts of acts in conflict therewith.

#### Effective Date

Section 7 of Ch. 4, Ex. Laws 1969 read "Sections 1, 2 and 3 of this act shall be in full force and effect on and after April 6, 1969, and sections 1, 2 and 3 shall apply to all benefit years beginning on and after April 6, 1969, and the insured status of all claimants who have a benefit year current on or after April 6, 1969, shall be redetermined and benefits shall be paid in accordance with this provision, provided that no insured worker shall have his benefits reduced or denied by redetermination resulting from the application of this provision; section 4 of this act shall be in full force and effect on and after April 1, 1969."

**87-110. Period, election and termination of employer's coverage.**  
(a). \* \* \* [Same as parent volume.]

(b) Except as otherwise provided in subsection (c) of this section an employing unit shall cease to be an employer subject to this act only as of the first day of January, of any calendar year, only if it files with the commission prior to the last day of February, of such year, a written application for termination of coverage, and the commission finds that the total wages payable for employment by said employer in the preceding calendar year did not exceed five hundred dollars (\$500). For the purpose of this subsection, the two (2) or more employing units mentioned in paragraph (2) or (3) of section 87-148 (i) shall be treated as a single employing unit.

(c) An employing unit not otherwise subject to this act, or any employing unit for which services are performed that do not constitute employment as defined in this act, may file with the commission, a written election that all such services performed by individuals in its employ in one (1) or more distinct establishments or places of business shall be deemed to constitute employment for all purposes of this act for not less than two (2) calendar years. Upon the written approval of such election by the commission, such services shall be deemed to constitute employment subject to this act from and after the date stated in such approval. Such services shall cease to be deemed employment subject hereto as of January 1, of any calendar year subsequent to such two (2) calendar years only if at least thirty (30) days prior to such first

day of January such employing unit has filed with the commission a written notice to that effect.

(d) Any political subdivision of this state may elect to cover under this act service performed by employees in all the hospitals and institutions of higher education as defined in section 87-148 (n), (o), operated by such political subdivision. The election may exclude any services described in section 87-148 (j)(7)(A). Election is to be made by filing with the commission a notice of such election at least thirty (30) days prior to the effective date of such election. Any political subdivision electing coverage under this subsection shall make payments in lieu of contributions with respect to benefits attributable to such employment as provided in section 87-109 (b)(4). An election under this section may be terminated, by filing with the commission written notice not later than thirty (30) days preceding the last day of the calendar year in which the termination is to be effective. Such termination becomes effective as of the first day of the next ensuing calendar year with respect to services performed after that date. The effective date of this subsection shall be January 1, 1972.

**History:** En. Sec. 8, Ch. 137, L. 1937; amd. Sec. 4, Ch. 137, L. 1939; amd. Sec. 5, Ch. 164, L. 1941; amd. Sec. 1, Ch. 37, L. 1969; amd. Sec. 1, Ch. 103, L. 1971.

#### Amendments

The 1969 amendment deleted "there were no twenty (20) different days, each day being in a different week within the preceding calendar year within which such employing unit employed one (1) or more individuals in an employment sub-

ject to this act, or" before "the total wages payable" in the first sentence of subsection (b).

The 1971 amendment deleted the former first paragraph of subsection (c), for text of which see parent volume; inserted "An employing unit not otherwise subject to this act, or" at the beginning of the former second paragraph, now the only paragraph, of subsection (c); added subsection (d); and made minor changes in phraseology.

**87-111. Unemployment compensation account—establishment and control.** There is hereby established separate and apart from all public moneys or funds of this state, an account in the agency fund known as the unemployment compensation account, which shall be administered by the commission exclusively for the purposes of this act. Any reference to the unemployment compensation fund in this code shall be taken to mean the unemployment compensation account in the agency fund. This account shall consist of (1) all contributions collected under this act, inclusive of voluntary contributions as provided in section 87-109 (c)(4), and payments made in lieu of contributions as provided in section 87-109 (b)(2) and (4); (2) interest earned upon any moneys in the account; (3) any property or securities acquired through the use of moneys belonging to the account; (4) all earnings of such property or securities; and (5) all money credited to this state's account in the unemployment trust fund pursuant to section 903 of the Social Security Act, as amended. All moneys in the account shall be mingled and undivided.

**History:** En. Subd. (a), Sec. 9, Ch. 137, L. 1937; amd. Sec. 2, Ch. 190, L. 1945; amd. Sec. 4, Ch. 171, L. 1957; amd. Sec. 206, Ch. 147, L. 1963; amd. Sec. 1, Ch. 88, L. 1971.

#### Amendments

The 1971 amendments inserted "and payments made in lieu of contributions as provided in section 87-109 (b) (2) and (4)" at the end of clause (1) in the third sentence.

**87-115. Transfers from unemployment compensation trust fund, etc.****Compiler's Notes**

Section 1, Ch. 132, Laws of 1969,  
amended section 87-117 to change the

name of the unemployment compensation  
commission to the employment security  
commission.

**87-116. Agreements with railroad retirement board.****Compiler's Notes**

Section 1, Ch. 132, Laws of 1969,  
amended section 87-117 to change the

name of the unemployment compensation  
commission to the employment security  
commission.

**87-117. Employment security commission — organization.** There is hereby created a commission to be known as the employment security commission of Montana. The commission shall consist of three (3) members who shall be appointed by the governor by and with the advice and consent of the senate. Two (2) of the members of the commission shall be from different political parties and shall serve for terms of four (4) years, provided, however, that one (1) of those first appointed after this act takes effect shall serve for a term of two (2) years. They shall serve on a per diem basis and shall be paid at the rate of twenty dollars (\$20) per day of service plus actual and necessary expenses, provided, however, that the total per diem compensation in any one (1) year for each of said two (2) members shall not exceed the sum of one thousand dollars (\$1,000). The third member of the commission, who shall be designated as a chairman at the time of his appointment, shall be paid a full-time salary in an amount to be fixed by the governor and shall be the executive director. During his term of membership on the commission, no member shall serve as an officer or committee member of any political party organization. The governor may, at any time, after notice and hearing, remove any commissioner for neglect of duty, malfeasance, misfeasance, or nonfeasance in office.

**History:** En. Subd. (a), Sec. 10, Ch. 137, L. 1937; amd. Sec. 1, Ch. 102, L. 1953; amd. Sec. 1, Ch. 132, L. 1969; amd. Sec. 1, Ch. 65, L. 1971.

The 1971 amendment increased the per diem specified by the fourth sentence from \$10 to \$20 per day, and increased the maximum annual per diem from \$500 to \$1000.

**Amendments**

The 1969 amendment substituted "employment security commission" for "unemployment compensation commission" in the first sentence.

**Cross-References**

Commission abolished and functions transferred, sec. 82A-1007.

**87-118. Divisions.** The commission shall establish two co-ordinate divisions: The Montana state employment service division created pursuant to section 87-132, and the unemployment insurance division. Each division shall be responsible to the executive director for the discharge of its distinctive function. Each division shall be a separate administrative unit with respect to personnel, budget, and duties except in so far as the commission may find that such separation is impracticable.

**History:** En. Subd. (b), Sec. 10, Ch. 137, L. 1937; amd. Sec. 2, Ch. 132, L. 1969.

**Amendments**

The 1969 amendment substituted "unemployment insurance division" for "unemployment compensation division" in the first sentence.



**87-120. Administration—duties and powers of commission.** It shall be the duty of the commission to administer this act; and it shall have power and authority to adopt, amend, or rescind such rules and regulations, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as it deems necessary or suitable to that end. Such rules and regulations shall be effective upon publication in the manner, not inconsistent with the provisions of this act, which the commission shall prescribe. The commission shall determine its own organization and methods of procedure in accordance with the provisions of this act, and shall have an official seal which shall be judicially noticed. The commission shall report as provided in section 2 [82-4002] of this act. Such report shall include a balance sheet of the moneys in the fund in which there shall be provided, if possible, a reserve against the liability in future years to pay benefits in excess of the then current contributions, which reserve shall be set up by the commission in accordance with accepted actuarial principles on the basis of statistics of employment, business activity, and other relevant factors for the longest possible period. Whenever the commission believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, it shall promptly so inform the governor and the legislature, and make recommendations with respect thereto.

**History:** En. Subd. (a), Sec. 11, Ch. 137, L. 1937; amd. Sec. 6, Ch. 156, L. 1961; amd. Sec. 40, Ch. 93, L. 1969.

in the fourth sentence for former provision requiring annual reports.

#### Amendments

The 1969 amendment substituted the reporting requirements of section 82-4002

#### Cross-References

Quasi-judicial functions of commission transferred to board of labor appeals, sec. 82A-1009.

**87-129. Reciprocal benefit arrangements.** The commission is hereby authorized to enter into arrangements with the appropriate agencies of other states or the federal government, whereby individuals performing services in this and other states for a single employing unit under circumstances not specifically provided for in this act, or under similar provisions of the unemployment compensation laws of such other states, shall be deemed to be engaged in employment performed entirely within this state or within one of such other states and whereby potential rights to benefits accumulated under the unemployment compensation laws of several states or under such a law of the federal government, or both, may constitute the basis for the payment of benefits through a single appropriate agency under terms which the commission finds will be fair and reasonable as to all affected interests, and will not result in any substantial loss to the fund.

The commission shall participate in any arrangements, approved by the U. S. secretary of labor, with the appropriate agencies of the other states or of the federal government whereby wages or services, upon the basis of which an individual may become entitled to benefits under the unemployment compensation law of another state or of the federal gov-

ernment, shall be deemed to be wages for employment by employers for benefit purposes;

Provided that in any instance involving the combining of an individual's wages and employment covered under two or more state unemployment compensation laws that the base period of a single state law will be used; and

Provided that such combining of wages will not involve the duplicate use of such wage credits; and

Provided that such other state agency or agency of the federal government has agreed to reimburse the unemployment compensation fund for such portion of benefits paid under this act upon the basis of such wages or services as the commission finds will be fair and reasonable as to all affected interests; and whereby the commission will reimburse other state or federal agencies charged with the administration of unemployment compensation laws, with such reasonable portion of benefits, paid under the law of any such other states or of the federal government upon the basis of employment or wages for employment by employers, as the commission finds will be fair and reasonable to all affected interests. Reimbursements so payable shall be deemed to be benefits for the purposes of this act. The commission is hereby authorized to make to other state or federal agencies, reimbursements from or to the unemployment compensation fund, in accordance with arrangements made pursuant to this section.

History: En. Subd. (j), Sec. 11, Ch. 137, L. 1937; amd. Sec. 3, Ch. 190, L. 1945; amd. Sec. 1, Ch. 91, L. 1971.

#### Amendments

The 1971 amendment substituted "shall participate in any arrangements, approved by the U. S. secretary of labor" for "is

also authorized to enter into arrangements" at the beginning of the second paragraph; inserted the first and second provisos; deleted "and receive from such other state or federal agencies" before "reimbursements" in the final sentence of the section; and made minor changes in phraseology and style.

### 87-130. Acquisition of property, etc.

#### Compiler's Notes

Section 1, Ch. 132, Laws of 1969, amended section 87-117 to change the

name of the unemployment compensation commission to the employment security commission.

### 87-132. State employment service.

#### Compiler's Notes

Section 1, Ch. 132, Laws of 1969, amended section 87-117 to change the

name of the unemployment compensation commission to the employment security commission.

### 87-133. Unemployment compensation administration account.

#### Compiler's Notes

Section 1, Ch. 132, Laws of 1969, amended section 87-117 to change the

name of the unemployment compensation commission to the employment security commission.

### 87-134. Reimbursement of fund.

#### Compiler's Notes

Section 1, Ch. 132, Laws of 1969, amended section 87-117 to change the

name of the unemployment compensation commission to the employment security commission.

**87-135. Penalty and interest on past-due contributions.****Compiler's Notes**

Section 1, Ch. 132, Laws of 1969, amended section 87-117 to change the

name of the unemployment compensation commission to the employment security commission.

**87-136. Collection—reciprocity with other states in effecting collection of unpaid unemployment compensation taxes.** (a) If, after due notice, any employer defaults in any payment of contributions or interest thereon, the amount due shall be collected by civil action in the name of the commission, and the employer adjudged in default shall pay the costs of such action. Civil actions brought under this section to collect contributions or interest thereon from an employer shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this act and cases arising under the workmen's compensation law of this state. Action for the collection of contributions due shall be brought within five (5) years after the due date of such contributions, otherwise to be barred as provided in section 93-2604.

(b) The courts of this state shall recognize and enforce liabilities for unemployment contributions imposed by other states which extend a like comity to this state. The commission is hereby empowered to sue in the courts of any other jurisdiction which extends such comity, to collect unemployment contributions and interest due this state. The officials of other states which by statute or otherwise extend a like comity to this state may sue in the courts of this state, to collect for such contributions and interest and penalties, if any, due such state; in any such case the chairman of the commission of this state may through his attorney or attorneys institute and conduct such suit for such other state. Venue of such proceedings shall be the same as for actions to collect delinquent contributions, penalties and interest due under this act. A certificate by the secretary of any such state under the great seal of such state attesting the authority of such official or officials to collect unemployment compensation contributions, penalties and interest shall be conclusive evidence of such authority.

**History:** En. Subd. (b), Sec. 14, Ch. 137, L. 1937; amd. Sec. 5, Ch. 137, L. 1939; amd. Sec. 8, Ch. 164, L. 1941; amd. Sec. 1, Ch. 36, L. 1969.

**Amendments**

The 1969 amendment designated the former section as subsection (a) and added subsection (b).

**87-142. Limitation of fees.****Attorney's Fees**

Attorney who failed to notify unemployment compensation commission that he represented three clients on a contingent fee basis, which the court determined could be considered a debt for "necessaries" under section 87-143, and not hav-

ing requested notification from the commission so that he could collect his fee from the three men, was unable to proceed against either the commission or the state. *McAlear v. Unemployment Compensation Commission*, 145 M 458, 405 P 2d 219.

**87-143. No assignment of benefits—exemptions.****Attorney's Fees**

Where services rendered by attorney restored three men to the rolls of the un-

employment compensation commission, set aside a one-year purge of their names from those rolls, and cleared their names



of fraud, court concluded that under such facts attorney's fees should be considered a debt incurred for "necessaries." Mc

Alear v. Unemployment Compensation Commission, 145 M 458, 405 P 2d 219.

**87-145. Penalties — falsity or willful nondisclosure — violations by employer or agent—violation of act or regulations—wrongfully collecting benefits.** (a) Whoever makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, to obtain or increase any benefit or other payment under this act, or under an employment security law of any other state, or territory or the federal government either for himself or for any other person, shall:

(1). \* \* \* [Same as parent volume.]

(2) Be disqualified for benefits thereafter until:

(A) He has repaid to the commission a sum equal to the amount so received by him; provided, however, will not be required to repay any amount so obtained more than five (5) years prior to the date of the commission's determination that the claimant made such false statements, willful nondisclosure or misrepresentation, as provided in this paragraph, and

(B) A period of not less than ten (10) nor more than fifty-two (52) weeks have elapsed since the date of such determination by the commission, the length of time of the disqualification as herein described to be determined by the commission in accordance with the severity of each case.

(b) to (d). \* \* \* [Same as parent volume.]

History: En. Sec. 16, Ch. 137, L. 1937; amd. Sec. 1, Ch. 150, L. 1951; amd. Sec. 7, Ch. 164, L. 1955; amd. Sec. 10, Ch. 156, L. 1961; amd. Sec. 1, Ch. 38, L. 1969.

#### Amendments

The 1969 amendment in item (a) (2)

(A), deleted "he" before "will not be required," and in item (a) (2) (B), substituted "A period of not less than ten (10) nor more than fifty-two (52) weeks" for "Twelve (12) months" at the beginning, and added "the length of the time \* \* \* the severity of each case."

**87-148. Definitions.** As used in this act, unless the context clearly requires otherwise:

(a) "Annual payroll" means the total amount of wages paid by an employer (regardless of the time of payment) for employment during a calendar year.

(b) to (e). \* \* \* [Same as parent volume.]

(f) "Commission" means the employment security commission established by this act.

(g). \* \* \* [Same as parent volume.]

(h) "Employing unit" means any individual or type of organization, including the state government, any of its political subdivisions or instrumentalities, any partnership, association, trust, estate, joint-stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to January 1, 1936, had in its employ one (1) or more individuals performing

services for it within this state. All individuals performing services within this state for any employing unit which maintains two (2) or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of this act. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for the purposes of this act, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit has actual or constructive knowledge of the work.

(i) "Employer" means:

(1) Any employing unit whose total annual payroll within either the current or preceding calendar year, exceeds the sum of five hundred dollars (\$500);

(2) and (3). \* \* \* [Same as parent volume.]

(4) Any employing unit not an employer by reason of any other paragraph of this subsection for which, within either the current or preceding calendar year, service is or was performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment fund or which, as a condition for approval of this act for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required, pursuant to such act, to be an "employer" under this act.

(5) Any employing unit which, having become an employer under paragraph (1), (2), or (3), or (4), has not, under section 87-110, ceased to be an employer subject to this act; or

(6) For the effective period of its election pursuant to section 87-110 (c) and (d) any other employing unit which has elected to become fully subject to this act.

(j) (1) "Employment" subject to other provisions of this subsection means service by an individual or by an officer of a corporation, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied.

(2) to (5). \* \* \* [Same as parent volume.]

(6) The term "employment" shall include service performed after December 31, 1971, by an individual in the employ of this state or any of its instrumentalities (or in the employ of this state and one (1) or more other states or their instrumentalities) for a hospital or institution of higher education located in this state.

(7) The term "employment" shall include service performed after December 31, 1971, by an individual in the employ of a religious, charitable, scientific, literary, or educational organization which is excluded from the term "employment" as defined in the Federal Unemployment Tax Act solely by reason of section 3306 (c) (8) of that Act.

(A) For the purposes of paragraphs (6) and (7) of this subsection the term "employment" does not apply to service performed:

(1) In the employ of a church or convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches; or

(2) By a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; or

(3) In the employ of a school which is not an institution of higher education; or

(4) In a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work; or

(5) Services performed as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or any agency of a state or political subdivision thereof, by an individual receiving such work relief or work training; or

(6) Services performed for a hospital in a state prison or other state correctional institution by an inmate of the prison or correctional institution.

(8) The term "employment" shall include the service of an individual who is a citizen of the United States, performed outside the United States (except in Canada or the Virgin Islands), after December 31, 1971, in the employ of an American employer (other than service which is deemed "employment" under the provisions of subparagraphs (2) or (3) of this subsection or the parallel provisions of another state's law), if:

(A) The employer's principal place of business in the United States is located in this state; or

(B) The employer has no place of business in the United States, but

(1) The employer is an individual who is a resident of this state; or

(2) The employer is a corporation which is organized under the laws of this state; or

(3) The employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any other state; or

(C) None of the criteria of divisions (A) and (B) of this subparagraph is met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this state.

(D) An "American employer," for purposes of this paragraph, means a person who is:

(1) An individual who is a resident of the United States; or

(2) A partnership if two-thirds ( $\frac{2}{3}$ ) or more of the partners are residents of the United States; or



(3) A trust, if all of the trustees are residents of the United States; or  
(4) A corporation organized under the laws of the United States or of any state.

(9) The term "employment" shall not include:

(A) Agricultural labor; the term "agricultural labor" includes all services performed prior to January 1, 1972, which was agricultural labor as defined in this subparagraph prior to such date, and remunerated services performed after December 31, 1971:

(1) On a farm, in the employ of any person in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry and fur-bearing animals and wildlife.

(2) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm.

(3) In connection with the production or harvesting of any commodity commonly known as agricultural commodities, or in connection with the hatching of poultry, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying and storing water for farming purposes.

(4) In the employ of the operator of a farm or a group of operators of farms (or a co-operative organization of which such operators are members) in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half ( $\frac{1}{2}$ ) of the commodity with respect to which such service is performed.

(5) The provisions of paragraphs (1), (2), (3), and (4) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or on a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer.

(6) As used in this section, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animals, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities and orchards.

(B) Domestic service in a private home, local college club or local chapter of a college fraternity or sorority;

(C) Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(D) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one (21) in the employ of his father or mother;

(E) Service performed in the employ of this state, except as provided in subsection (j) (6) of this section, or of any political subdivision thereof, or of any instrumentality of this state or its political subdivisions;

(F) Service performed in the employ of any other state or its political subdivisions, or of the United States government, or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law shall not be entitled to exemption under this section and shall be subject to this act the same as state banks;

(G) Service performed in the employ of community action agencies and the delegate agencies of these community action agencies may be entitled to exemption and may be subject to this act with the consent and approval of the employment security commission.

(H) Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of Congress; provided, that the commission is hereby authorized and directed to enter into agreements with the proper agencies under such act of Congress, which agreements shall become effective ten (10) days after publication thereof in the manner in section 87-121 for general rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this act, acquired rights to unemployment compensation under such act of Congress, or who have, after acquiring potential rights to unemployment compensation under such act of Congress, acquired rights to benefits under this act;

(I) Services performed in the delivery and distribution of newspapers or shopping news from house to house and business establishments by an individual under the age of eighteen (18) years, but not including the delivery or distribution to any point or points for subsequent delivery or distribution.

(J) Services performed by real estate, securities and insurance salesmen paid solely by commissions and without guarantee of minimum earnings.

(K) Service performed, in the employ of a school, college, or university, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college or university, or by the spouse of such a student, if such spouse is advised, at the time such spouse commences to perform such service, that the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university, and such employment will not be covered by any program of unemployment insurance.

(L) Service performed by an individual under the age of twenty-two (22) who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place

where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subparagraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers.

(M) Service performed in the employ of a hospital, if such service is performed by a patient of the hospital.

(k) and (l). \* \* \* [Same as parent volume.]

(m) "State," includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and the Dominion of Canada.

(n) "Institution of higher education" for the purposes of this section, means an education institution which:

(1) admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(2) is legally authorized in this state to provide a program of education beyond high school;

(3) provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, a program of post-graduate or post-doctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(4) is a public or other nonprofit institution.

(5) Notwithstanding any of the foregoing provisions of this subsection, all colleges and universities in this state are institutions of higher education for purposes of this section.

(o) "Hospital" means an institution which has been licensed, certified or approved by the state of Montana as a hospital.

**History:** En. Subd. (a) to (m), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 1, Ch. 160, L. 1953; amd. Sec. 9, Ch. 164, L. 1955; amd. Sec. 11, Ch. 171, L. 1957; amd. Sec. 1, Ch. 177, L. 1959; amd. Sec. 1, Ch. 178, L. 1959; amd. Sec. 2, Ch. 84, L. 1965; amd. Sec. 2, Ch. 37, L. 1969; amd. Sec. 1, Ch. 411, L. 1971.

#### Amendments

The 1965 amendment inserted "securities" in subdivision (j) (6) (J), now subdivision (j) (9) (J).

The 1969 amendment deleted "which for some \* \* \* such day" after "employing unit" in subdivision (i) (1).

The 1971 amendment deleted subdivision (a) (2) defining "average annual payroll"; substituted "employment security" for "unemployment compensation"

in subdivision (f); inserted "the state government, any of its political subdivisions or instrumentalities" in the first sentence of subdivision (h); inserted subdivision (i) (4) and the reference to it in subdivision (i) (5); redesignated former subdivisions (i) (4) and (i) (5) as subdivisions (i) (5) and (i) (6); inserted "and (d)" in subdivision (i) (6); inserted "by an individual or by an officer of a corporation" in subdivision (j) (1); inserted subdivisions (j) (6), (7) and (8); redesignated former subdivision (j) (6) as subdivision (j) (9); added "prior to \* \* \* December 31, 1971" to the end of the preliminary paragraph of subdivision (j) (9) (A); deleted "maple syrup or maple sugar or" after "harvesting of" in subdivision (j) (9) (A) (3); deleted "or in connection with the raising or harvesting of mushrooms" after "agricultural commodities" in subdivision (j) (9) (A)



(3); inserted "the employ \* \* \* are members in" in subdivision (j) (9) (A) (4); inserted "in its unmanufactured state" in subdivision (j) (9) (A) (4); substituted "operator produced \* \* \* is performed" for "service is \* \* \* for market" in subdivision (j) (9) (A) (4); revised the former second sentence of subdivision (j) (9) (A) (4) and designated it as subdivision (j) (9) (A) (5); redesignated former subdivision (j) (9) (A) (5) as subdivision (j) (9) (A) (6); deleted former subdivision (j) (9) (E); redesignated for-

mer subdivisions (j) (9) (F) and (G) as subdivisions (j) (9) (E) and (F); inserted the present subdivision (j) (9) (G); added subdivisions (j) (9) (K), (L) and (M); deleted "Hawaii" and "Guam" in subdivision (m); added subdivisions (n) and (o); and made minor changes in phraseology and style.

#### Effective Date

Section 3 of Ch. 84, Laws 1965 read "This act shall be in full force and effect from and after April 1, 1965."

### 87-149. Definitions—continued. (a) Total unemployment:

(1) and (2). \* \* \* [Same as parent volume.]

(3) As used in this subsection the term "wages" shall include only that part of remuneration for work which is in excess of twice the weekly benefit amount, and the term "service" shall include only that work in excess of twelve (12) hours in any one week.

(b) to (f). \* \* \* [Same as parent volume.]

**History:** En. Subd. (n) to (r), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 6, Ch. 190, L. 1945; amd. Sec. 3, Ch. 238, L. 1955; amd. Sec. 12, Ch. 171, L. 1957; amd. Sec. 11, Ch. 156, L. 1961; amd. Sec. 4, Ch. 269, L. 1963; amd. Sec. 1, Ch. 200, L. 1969.

#### Compiler's Notes

Section 1, Ch. 132, Laws of 1969, amended section 87-117 to change the name of the unemployment compensation commission to the employment security commission.

#### Amendments

The 1969 amendment, in subdivision (a) (3), substituted "twice the weekly benefit amount" for "fifteen dollars (\$15.00) in any one week" in the definition of "wages"; and substituted present definition of "service" for one providing that "'services' shall not include work for which remuneration equal to or less than fifteen dollars (\$15.00) per week is payable, or for one (1) day's work not exceeding eight (8) hours, whichever is greater."

## TITLE 87A—UNIFORM COMMERCIAL CODE

Chapter 9. Secured transactions—sales of accounts, contract rights and chattel paper, 87A-9-302.1 to 87A-9-302.3, 87A-9-402 to 87A-9-407.

### CHAPTER 1—GENERAL PROVISIONS

#### Part 1—Short Title, Construction, Application and Subject Matter of the Act

##### 87A-1-101. Short title.

NOTE.—Uniform State Law. In addition to the states listed in the note in the parent volume the following also have adopted the Uniform Commercial Code: Alabama, Arizona, Colorado, Delaware,

Florida, Hawaii, Idaho, Iowa, Kansas, Minnesota, Mississippi, Nevada, North Carolina, North Dakota, South Carolina, South Dakota, Texas, Utah, Vermont, Washington, and also Virgin Islands.

### CHAPTER 2—SALES

#### Part 3—General Obligation and Construction of Contract

##### 87A-2-314. Implied warranty—merchantability—usage of trade.

#### DECISIONS UNDER FORMER LAW

##### Manufacturer's Warranty

Seller who did not manufacture laundromat equipment made no implied warranty of fitness for intended use within former statute providing that one who manufactures an article under order for par-

ticular purpose warrants by sale that it is reasonably fit for that purpose, especially in view of seller's disclaimer printed on reverse side of sales agreement. *Ryan v. Ald, Inc.*, 149 M 367, 427 P 2d 53.

### CHAPTER 3—COMMERCIAL PAPER

#### Part 1—Short Title, Form and Interpretation

##### 87A-3-112. Terms and omissions not affecting negotiability.

##### Cross-Reference

Waiver of statutory exemptions in unsecured note unenforceable, sec. 93-5813.1.

#### Part 4—Liability of Parties

##### 87A-3-407. Alteration.

#### DECISIONS UNDER FORMER LAW

##### Material Alteration

In conviction of grand larceny, in which defendant had stolen and subsequently cashed check, the tearing of the check and

its repair did not constitute spoilation under former section 55-907, so as to make the check a nonnegotiable instrument. *State v. Romero*, 146 M 77, 404 P 2d 500.

## CHAPTER 8—INVESTMENT SECURITIES

## Part 3—Purchase

## 87A-8-307. Effect of delivery without endorsement, etc.

## DECISIONS UNDER FORMER LAW

**Gift of Stock Certificate**

Although endorsement may not be absolutely necessary to valid gift of stock certificates, fact that alleged donor had not endorsed certificates as required under

former law was evidence that no delivery occurred and hence that there was no valid gift. *Bodine v. Bodine*, 149 M 29, 422 P 2d 650.

## CHAPTER 9—SECURED TRANSACTIONS—SALES OF ACCOUNTS, CONTRACT RIGHTS AND CHATTEL PAPER

## Part 3. Rights of Third Parties—Perfected and Unperfected Security Interests—Rules of Priority

- Section 87A-9-302.1. Financing statements of transmitting utilities—definitions.  
 87A-9-302.2. Place of filing of utility financing statement—contents—perfection of security interest.  
 87A-9-302.3. Continued effectiveness of certain laws.

## Part 4. Filing

- Section 87A-9-402. Formal requisites of financing statement—amendments.  
 87A-9-403. What constitutes filing—duration of filing—effect of lapsed filing—duties of filing officer.  
 87A-9-404. Termination statement.  
 87A-9-405. Assignment of security interest—duties of filing officer—fees.  
 87A-9-406. Release of collateral—duties of filing officer—fees.  
 87A-9-407. Information from filing officer.

## Part 2—Validity of Security Agreement and Rights of Parties Thereto

## 87A-9-203. Enforceability of security interest, etc.

**Compiler's Notes**

Sections 53-123 to 53-128, contained in the reference to Chapter 1 of Title 53, in subsection (2) of this section in the par-

ent volume, was repealed by Sec. 1, Ch. 101, Laws 1959. Section 53-138 was repealed by Sec. 5, Ch. 256, Laws 1965.

## Part 3—Rights of Third Parties—Perfected and Unperfected Security Interests—Rules of Priority

87A-9-302.1. Financing statements of transmitting utilities—definitions. As used in this act,

(a) "Transmitting utility" means: (1) Any corporation or other business entity primarily engaged, pursuant to rights or franchises issued by and subject to the jurisdiction of a state or federal regulatory body, in the railroad or street railway business, the telephone or telegraph business, the transmission of oil, gas or petroleum products by pipeline, or the transmission or the production and transmission of electricity, steam, gas or water, and (2) any other corporation primarily engaged in the production, transmission or distribution of electricity, or the furnishing of telephone service, whether or not such corporation is subject to the jurisdiction of a state or federal regulatory body.



(b) "Uniform Commercial Code" means Chapters 1 through 10 of Title 87A of the Revised Codes of Montana, 1947.

History: En. Sec. 1, Ch. 76, L. 1965; amd. Sec. 1, Ch. 279, L. 1967.

#### Compiler's Note

Although the title of Ch. 76, Laws 1965, referred to codification of this act at 87A-9-408, the act itself contained no directions as to compilation.

#### Title of Act

An act relating to the Uniform Commercial Code of Montana by adding a new section to be known and codified as section 87A-9-408, relating to the filing

by certain public utilities of certain instruments required to be filed under the provisions of the Uniform Commercial Code; providing for a repealing clause; providing for a severability clause; and providing for an effective date.

#### Amendments

The 1967 amendment subdivided subsection (a), designating the first sentence as subsection (a)(1) and adding subsection (a)(2), and made minor changes in punctuation.

**87A-9-302.2. Place of filing of utility financing statement—contents—perfection of security interest.** Financing statements of a transmitting utility, notwithstanding sections 87A-9-302(3), 87A-9-302(4), 87A-9-401(1), 87A-9-402, 87A-9-403, 87A-9-404, 87A-9-405 and 87A-9-406 of the Uniform Commercial Code.

(a) If filing is required under the Uniform Commercial Code, the proper place to file in order to perfect a security interest in personal property or fixtures of a transmitting utility or other corporation covered hereby is in the office of the secretary of state;

(b) When the financing statement covers goods of a transmitting utility which are or are to become fixtures, no description of the real estate concerned is required;

(c) A security interest in rolling stock of a transmitting utility may be perfected either as provided in section 20 (c) of the Interstate Commerce Act or by filing a financing statement pursuant to the Uniform Commercial Code as provided in subsection (a).

History: En. Sec. 2, Ch. 76, L. 1965; amd. Sec. 2, Ch. 279, L. 1967.

#### Compiler's Note

Filing provisions of Interstate Commerce Act, see 49 U. S. C., sec. 20c.

#### Amendments

The 1967 amendment, in the first paragraph, inserted "87A-9-403, 87A-9-404, 87A-9-405 and 87A-9-406" after "87A-9-402"; in subdivision (a), inserted "or other corporation covered hereby" after "transmitting utility."

#### Repealing Clause

Section 3 of Ch. 279, Laws 1967 repealed all acts and parts of acts in conflict therewith.

#### Effective Date

Section 4 of Ch. 279, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 2, 1967.

**87A-9-302.3. Continued effectiveness of certain laws.** Unless displaced by the specific provisions of this act, the Uniform Commercial Code and other applicable laws remain in full force and effect and supplement the provisions of this act.

History: En. Sec. 3, Ch. 76, L. 1965.

#### Separability Clause

Section 5 of Ch. 76, Laws 1965 read "It is the intent of the legislative assembly that if a part of this act is invalid,

all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

**Repealing Clause**

Section 4 of Ch. 76, Laws 1965 repealed all acts and parts of acts in conflict therewith.

**Effective Date**

Section 6 of Ch. 76, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 26, 1965.

**87A-9-306. "Proceeds"—secured party's rights, etc.****Application of Proceeds**

Where debtor's liquor license had been purchased with advances from bank under security agreement, proceeds from sale of such license were to be applied first to notes secured by such security agreement, then to note secured by an attachment,

and finally to other obligations, since sale contract provided that all proceeds were to be placed in escrow with bank to whom all debts were owed. *Gallatin Trust & Savings Bank v. Darrah*, 153 M 228, 456 P 2d 288.

**87A-9-312. Priorities among conflicting security interests, etc.****DECISIONS UNDER FORMER LAW****Ranking of Priorities**

Under statute making liquor license transferable personal property capable of being mortgaged to secure existing debt and other statute providing that mortgage first given, acknowledged and recorded was entitled to priority, owner of note

secured by properly recorded mortgage on liquor license was entitled to foreclose mortgage notwithstanding claim of lessor based on covenant in lease whereby lessee agreed not to move liquor license from property. *Gaskill v. Severovic*, 149 M 340, 426 P 2d 582.

**Part 4—Filing****87A-9-402. Formal requisites of financing statement—amendments.**

(1) A financing statement is sufficient if it is signed by the debtor and the secured party, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor and contains a statement indicating the types, or describing the items, of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. Except for financing statements filed pursuant to section 87A-9-302.2, R.C.M. 1947 when the financing statement covers crops growing or to be grown or goods which are or are to become fixtures, the statement must also contain a description of the real estate concerned and the name of the record owner or record lessee thereof. A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by both parties.

(2). \* \* \* [Same as parent volume.]

(3) A form substantially as follows is sufficient to comply with subsection (1):

Name of debtor (or assignor) \_\_\_\_\_

Address \_\_\_\_\_

Name of secured party (or assignee) \_\_\_\_\_

Address \_\_\_\_\_

Name of record owner or record lessee \_\_\_\_\_

Address \_\_\_\_\_

1. to 4. \* \* \* [Same as parent volume.]

(4) and (5). \* \* \* [Same as parent volume.]

History: En. Sec. 9-402, Ch. 264, L. 1963; amd. Sec. 1, Ch. 272, L. 1967.

**Amendments**

The 1967 amendment, in subsection (1), inserted "Except for financing statements filed pursuant to section 87A-9-302.2, R. C. M. 1947" at the beginning of the

third sentence and added "and the name of the record owner or record lessee thereof" after "real estate concerned"; and, in subsection (3), inserted after the name and address of the secured party "Name of record owner or record lessee" and "Address."

**87A-9-403. What constitutes filing—duration of filing—effect of lapsed filing—duties of filing officer.** (1). \* \* \* [Same as parent volume.]

(2) A filed financing statement which states a maturity date of the obligation secured of five (5) years or less is effective until such maturity date and thereafter for a period of sixty (60) days. Any other filed financing statement is effective for a period of five (5) years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of such sixty-day period after a stated maturity date or on the expiration of such five-year period, as the case may be, unless a continuation statement is filed prior to the lapse. Upon such lapse the security interest becomes unperfected. A filed financing statement which states that the obligation secured is payable on demand is effective for five (5) years from the date of filing.

(3) A continuation statement may be filed by the secured party (i) within six (6) months before [and] sixty (60) days after a stated maturity date of five (5) years or less, and (ii) otherwise within six (6) months prior to the expiration of the five-year period specified in subsection (2). Any such continuation statement must be signed by the secured party, identify the original statement by file number and state that the original statement is still effective. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for five (5) years after the last date to which the filing was effective whereupon its lapses in the same manner as provided in subsection (2) unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it.

(4). \* \* \* [Same as parent volume.]

(5) Except financing statements filed pursuant to section 87A-9-302.2, R.C.M., 1947, if the instrument covers crops growing or to be grown or goods which are, or are to become fixtures, or timber, said instrument shall be indexed in accordance with the requirements applicable to the recording of mortgages of real estate under the laws of this state. For the purpose of such indexing, each of the debtor (or assignor) and the record owner or record lessee of any real estate described in the financing statement shall be considered a mortgagor with respect to the financing statement and the secured party (or assignee) shall be considered a mortgagee with respect to the financing statement.

(6) If the collateral is equipment or rolling stock of railroads or street railways, the fee for filing, indexing, and furnishing filing data for an original or a continuation statement shall be fifteen dollars (\$15.00).



In all other cases the uniform fee for filing, indexing and furnishing filing data for an original or a continuation statement shall be two dollars (\$2).

**History:** En. Sec. 9-403, Ch. 264, L. 1963; amd. Sec. 2, Ch. 272, L. 1967; amd. Sec. 4, Ch. 185, L. 1971.

#### Amendments

The 1967 amendment added a new subsection (5); redesignated old subsection (5) as new subsection (6); and substituted "data" for "date" after "furnishing filing" in the second sentence.

The 1971 amendment increased the fee specified at the end of subsection (6) from one dollar to two dollars; deleted from the end of subsection (6) a clause reading "except that where recording is done by photographic or other similar process the uniform fee shall be two dollars (\$2.00) for each page or fraction thereof of such original or continuation statement"; and made minor changes in style.

**87A-9-404. Termination statement.** (1) Whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must on written demand by the debtor send the debtor a statement that he no longer claims a security interest under the financing statement, which shall be identified by file number, and by document number, as the case may be. A termination statement signed by a person other than the secured party of record must include or be accompanied by the assignment or a statement by the secured party of record that he has assigned the security interest to the signer of the termination statement. The uniform fee for filing and indexing such an assignment or statement thereof shall be two dollars (\$2). If the affected secured party fails to send such a termination statement within ten days after proper demand therefor he shall be liable to the debtor for one hundred dollars (\$100), and in addition for any loss caused to the debtor by such failure.

(2) On presentation to the filing officer of such a termination statement he must note it in the index. The filing officer shall remove from the files, mark "terminated" and send or deliver to the secured party the financing statement and any continuation statement, statement of assignment or statement of release pertaining thereto. If the original financing statement or any continuation statement has been indexed in the records relating to real estate mortgages, the termination statement must be indexed in accordance with the requirements applicable to releases of real estate mortgages.

(3) If the collateral is equipment or rolling stock of railroads or street railways, the fee for filing and indexing a termination statement including sending or delivering the financing statement shall be fifteen dollars (\$15.00). In all other cases the uniform fee for filing and indexing a termination statement including sending or delivering the financing statement shall be two dollars (\$2).

**History:** En. Sec. 9-404, Ch. 264, L. 1963; amd. Sec. 3, Ch. 272, L. 1967; amd. Sec. 5, Ch. 185, L. 1971.

#### Amendments

The 1967 amendment, added "and by document number, as the case may be" after "by file number" in the first sen-

tence of subsection (1); and, inserted the third sentence in subsection (2).

The 1971 amendment increased the fees specified at the end of the third sentence of subsection (1) and at the end of the second sentence of subsection (3) from one dollar to two dollars; deleted from the end of the third sentence of subsec-

tion (1) a clause reading "except that where recording is done by photographic or other similar process the uniform fee shall be two dollars (\$2.00) for each page or fraction thereof of such assignment or statement"; deleted from the end of subsection (3) a clause reading "except that

where recording is done by photographic or other similar process the uniform fee shall be two dollars (\$2.00) for each page or fraction thereof of such termination statement"; and made minor changes in style.

**87A-9-405. Assignment of security interest—duties of filing officer—fees.** (1) A financing statement may disclose an assignment of a security interest in the collateral described in the statement by indication in the statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the statement. Either the original secured party or the assignee may sign this statement as the secured party. On presentation to the filing officer of such a financing statement the filing officer shall mark the same as provided in section 87A-9-403 (4). If the collateral is equipment or rolling stock of railroads or street railways, the fee for filing, indexing and furnishing filing data for a financing statement so indicating an assignment shall be fifteen dollars (\$15.00). In all other cases the uniform fee for filing, indexing and furnishing filing data for a financing statement so indicating an assignment shall be two dollars (\$2).

(2) A secured party may assign of record all or a part of his rights under a financing statement by the filing of a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and the date of filing of the financing statement and the name and address of the assignee and containing a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separate statement, the filing officer shall mark such separate statement with the date and hour of the filing. He shall note the assignment on the index of the financing statement. If the original financing statement or any continuation statement has been indexed in the records relating to real estate mortgages, the statement of assignment must contain a reference to the document number of such original or continuation statement and must be indexed in accordance with the requirements applicable to assignments of mortgages. If the collateral is equipment or rolling stock, of railroads or street railways, the fee for filing, indexing and furnishing filing data about such a separate statement of assignment shall be fifteen dollars (\$15.00). In all other cases the uniform fee for filing, indexing and furnishing filing data about such a separate statement of assignment shall be two dollars (\$2).

(3). \* \* \* [Same as parent volume.]

**History:** En. Sec. 9-405, Ch. 264, L. 1963; amd. Sec. 4, Ch. 272, L. 1967; amd. Sec. 6, Ch. 185, L. 1971.

#### **Amendments**

The 1967 amendment substituted "data" for "date" in the fifth sentence of subsection (1); and inserted the fifth sentence in subsection (2).

The 1971 amendment increased the fees specified at the end of subsection (1) and at the end of subsection (2) from one dollar to two dollars; and deleted from the end of each of such subsections a clause reading "except that where recording is done by photographic or other similar process the uniform fee shall be two dollars (\$2.00) for each page or fraction thereof of such statement."

**87A-9-406. Release of collateral—duties of filing officer—fees.** A secured party of record may by his signed statement release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains description of the collateral being released, the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. Upon presentation of such a statement to the filing officer he shall mark the statement with the hour and date of filing and shall note the same upon the margin of the index of the filing of the financing statement. If the original financing statement or any continuation statement has been indexed in the records relating to real estate mortgages, the statement of release must contain a reference to the document number of such original or continuation statement, and must be indexed in accordance with the requirement applicable to release of mortgages. If the collateral is equipment or rolling stock of railroads or street railways, the fee for filing and noting such a statement of release shall be fifteen dollars (\$15.00). In all other cases the uniform fee for filing and noting such a statement of release shall be two dollars (\$2).

**History:** En. Sec. 9-406, Ch. 264, L. 1963; amd. Sec. 5, Ch. 272, L. 1967; amd. Sec. 7, Ch. 185, L. 1971.

#### **Amendments**

The 1967 amendment inserted the fourth sentence.

The 1971 amendment increased the fee specified at the end of the section from one dollar to two dollars; deleted from the end of the section a clause reading

“except that where recording is done by photographic or other similar process the uniform fee shall be two dollars (\$2.00) for each page or fraction thereof of such statement”; and made a minor change in phraseology.

#### **Repealing Clause**

Section 6 of Ch. 272, Laws 1967 repealed all acts and parts of acts in conflict therewith.

**87A-9-407. Information from filing officer.** (1). \* \* \* [Same as parent volume.]

(2) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file on the date and hour stated therein, any presently effective financing statement naming a particular debtor and any statement of assignment thereof and if there is, giving the date and hour of filing of each such statement and the name and addresses of each secured party therein. The uniform fee for such a certificate shall be three dollars (\$3). Upon request the filing officer shall furnish a copy of any filed financing statement or statement of assignment for a uniform fee of fifty cents (50¢) per page.

**History:** En. Sec. 9-407, Ch. 264, L. 1963; amd. Sec. 8, Ch. 185, L. 1971.

#### **Amendments**

The 1971 amendment substituted “three dollars (\$3.00)” at the end of the second

sentence of subsection (2) for “one dollar (\$1.00) plus thirty cents (30¢) for each financing statement and for each statement of assignment reported therein”; and made a minor change in phraseology.



**Part 5—Default****87A-9-505. Compulsory disposition of collateral, etc.**

## DECISIONS UNDER FORMER LAW

**Conditional Sales Contract**

Upon default of conditional sales contract, seller could treat contract as existing but broken by buyer and maintain

action for damages for breach under former statute. *White v. Nollmeyer*, 151 M 387, 443 P 2d 873.



## TITLE 89—WATERS AND IRRIGATION

- Chapter 1. Montana Water Resources Act of 1967, 89-101.1, 89-101.2 to 89-103.8, 89-118, 89-132.1.
3. Weather modification activities, 89-310 to 89-331.
  7. Dams and reservoirs—construction and examination of, 89-702, 89-702.1.
  8. Water rights—appropriation and adjudication, 89-801 to 89-801.2, 89-813, 89-847 to 89-849, 89-851.
  9. Yellowstone River Compact—ratification of, 89-907 to 89-909, 89-912, 89-914.
  12. Irrigation districts—organization, 89-1201, 89-1208.
  17. Irrigation districts—bonds, 89-1701, 89-1705, 89-1708.
  18. Irrigation districts—taxes and assessments, 89-1801, 89-1811.
  21. Irrigation districts—appeals—miscellaneous provisions, 89-2107.
  23. Drainage districts—commissioners—election—organization—reports, 89-2348.
  25. Drainage districts—bonds—refunding indebtedness, 89-2501, 89-2502.
  29. Appropriation and regulation of ground water, 89-2911, 89-2913.
  33. County and municipal participation in flood control and water conservation, 89-3301 to 89-3309, 89-3309.1, 89-3310 to 89-3314.
  34. Conservancy districts, 89-3401 to 89-3449.
  35. Floodway management and regulation, 89-3501 to 89-3515.

### CHAPTER 1—MONTANA WATER RESOURCES ACT OF 1967

- Section 89-101.1. Short title.
- 89-101.2. State necessity and policy.
- 89-102. Definitions.
- 89-103. Montana water resources board—officers—meetings—quorum—employees—counsel—compensation.
- 89-103.1. Director of Montana water resources board—appointment—qualifications.
- 89-103.2. Powers and duties of director.
- 89-103.3. Salaries of director and employees of board.
- 89-103.4. Powers of Carey Land Act board and state engineer transferred to Montana water resources board.
- 89-103.5. Records and property transferred to Montana water resources board.
- 89-103.6. Funds and appropriations transferred to Montana water resources board.
- 89-103.7. Yellowstone compact obligations unimpaired.
- 89-103.8. State obligations unimpaired.
- 89-118. Powers and duties of board—actions at law.
- 89-132.1. Additional powers and duties of the board.

### 89-101. (349.1) Repealed.

#### Repeal

This section (Sec. 1, Ch. 35, Ex. L. 1933), relating to the state purpose of

water conservation, was repealed by Sec. 7, Ch. 158, Laws 1967.

**89-101.1. Short title.** This act shall be known and may be cited as the "Montana Water Resources Act of 1967."

**History:** En. Sec. 1, Ch. 158, L. 1967.

#### Title of Act

An act providing for the Montana Water Resources Act of 1967; providing an expanded statement of state necessity and policy relating to water resources; amend-

ing section 89-103, R. C. M. 1947, providing that name of the state water conservation board shall be changed to Montana water resources board; providing additional powers for the Montana water resources board; providing for a comprehensive inventory of water resources; pro-



viding for a state water plan; amending section 89-102, R. C. M. 1947, providing additional definitions; amending section 89-813, R. C. M. 1947, providing that county clerks and recorders shall furnish

the Montana water resources board with copies of water appropriations and transfers of water appropriations; and repealing section 89-101, R. C. M. 1947.

**89-101.2. State necessity and policy.** It is hereby declared that:

(1) The general welfare of the people of Montana, in view of the state's population growth and expanding economy, requires that water resources of the state be put to optimum beneficial use and not wasted.

(2) The public policy of the state is to promote the conservation, development and beneficial use of the state's water resources to secure maximum economic and social prosperity for its citizens.

(3) The state, in the exercise of its sovereign power, acting through the water resources board, hereinafter created, shall co-ordinate development and use of the water resources of the state so as to effect full utilization, conservation and protection of its water resources.

(4) The development and utilization of water resources, and the efficient, economic distribution thereof, are vital to the people in order to protect existing uses and to assure adequate future supplies for domestic, industrial, agricultural and other beneficial uses.

(5) The water resources of the state must be protected and conserved to assure adequate supplies for public recreational purposes and for the conservation of wildlife and aquatic life.

(6) The public interest requires the construction, operation and maintenance of a system of works for the conservation, development, storage, distribution and utilization of water, which said construction, operation and maintenance is a single object and is in all respects for the welfare and benefit of the people of the state.

(7) It is necessary to co-ordinate local, state and federal water resource development and utilization plans and projects through a single agency of state government, hereinafter created and to be known as the "Montana water resources board."

(8) The greatest economic benefit to the people of Montana can be secured only by the sound co-ordination of development and utilization of water resources with the development and utilization of all other resources of the state.

(9) To achieve these objectives, and to protect the waters of Montana from diversion to other areas of the nation, it is essential that a comprehensive, co-ordinated multiple-use water resource plan be progressively formulated, to be known as the "state water plan."

**History:** En. Sec. 2, Ch. 158, L. 1967.

**89-102. (349.2) Definitions.** As used in this act, the following words and terms shall have the following meanings:

(a) the word "board" shall mean the Montana water resources board hereinafter created.

(b) The word "works" shall be deemed to include all property, rights, easements and franchises relating thereto and deemed necessary or convenient for their operation, and all water rights acquired or exercised by the board in connection with such works, and shall embrace

all means of conserving and distributing water, including, without limiting the generality of the foregoing, reservoirs, dams, diversion canals, distributing canals, waste canals, drainage canals, dikes, lateral ditches and pumping units, mains, pipelines and waterworks systems and shall include all such works for the conservation, development, storage, distribution and utilization of water including, without limiting the generality of the foregoing, works for the purpose of irrigation, flood prevention, drainage, fish and wildlife, recreation, development of power, watering of stock, supplying of water for public, domestic, industrial or other uses and for fire protection.

(c) The term "cost of works" shall embrace the cost of construction, the cost of all lands, property, rights, easements and franchises acquired, which are deemed necessary for such construction, the cost of all water rights acquired or exercised by the board in connection with such works, the cost of all machinery and equipment, financing charges, interest prior to and during construction and for a period not exceeding three (3) years after the completion of construction, cost of engineering and legal expenses, plans, specifications, surveys, estimates of cost, and other expenses necessary or incident to determining the feasibility or practicability of any project, administrative expense and such other expenses as may be necessary or incident to the financing herein authorized and the construction of the works and the placing of the same in operation; provided, however, the board in determining the cost of works may make nonreimbursable allowances for costs of public benefits, including but not limited to, irrigation, recreation, flood prevention, fish and wildlife, and stream stabilization.

(d) The word "owner" shall include all individuals, irrigation districts, drainage districts, flood control districts, incorporated companies, societies or associations having any title or interest in any properties, rights, easements or franchises to be acquired.

(e) and (f). \* \* \* [Same as parent volume.]

**History:** En. Sec. 2, Ch. 35, Ex. L. 1933; amd. Sec. 1, Ch. 95, L. 1935; amd. Sec. 1, Ch. 163, L. 1965; amd. Sec. 3, Ch. 158, L. 1967.

#### Amendments

The 1965 amendment inserted "waste canals, drainage canals, dikes" in paragraph (b); inserted "flood prevention, drainage, fish and wildlife, recreation" near the end of paragraph (b); substituted

"industrial or other uses and for fire protection" at the end of paragraph (b) for "industrial and other uses for fire protection"; added the proviso at the end of paragraph (c); and inserted "drainage districts, flood control districts" in paragraph (d).

The 1967 amendment, in subdivision (a), substituted "Montana water resources" for "state water conservation."

**89-103. (349.3) Montana water resources board—officers—meetings—quorum—employees—counsel—compensation.** (1) There is hereby created a board to be known as the "Montana water resources board," and by that name the board may sue and be sued, plead and be impleaded, and contract and be contracted with. Wherever in this code the words, "state water conservation board" shall be used they shall mean the "Montana water resources board." The board shall consist of seven (7) members, including the governor and director who shall be members ex officio. The five (5) remaining members shall be qualified electors of the state and

shall be appointed by the governor with the consent of the senate, and shall serve for a term of six (6) years, except that immediately after the effective date of this act the governor shall appoint two (2) members of the board whose term of office shall expire on the second Monday in January, 1967, another two (2) members of the board whose term of office shall expire on the second Monday in January, 1969, and one (1) member of the board whose term of office shall expire on the second Monday in January, 1971, and their successors shall be appointed for a term of six (6) years, except that any person appointed to fill a vacancy shall be eligible for reappointment. Any of the appointed members of the board may be removed by the governor at any time, and any vacancy caused by the death, removal, or resignation or disqualification of any appointed member shall be filled by appointment as hereinabove provided. Succeeding appointments, except when made to fill a vacancy, shall be made on or before the second (2) Monday in January during the biennial session of the legislative assembly preceding the commencement of the term for which the appointment is made. Before entering upon the discharge of his duties, each appointed member shall take, subscribe and file with the secretary of state the oath prescribed by the constitution.

(2) The governor shall be the chairman of the board and the vice-chairman shall be the secretary and treasurer of the board. The board shall maintain its principal office in the city of Helena and may maintain such branch offices as it may determine. It shall elect a vice-chairman at its first meeting who shall preside at all meetings of the board when the chairman thereof is absent. It may provide for the holding of regular meetings and may hold a special meeting for the transaction of any business which may properly come before the board at any time and at any place in the state upon the call of the chairman or the vice-chairman or any two (2) members, notice of which may be given by telegram or by depositing in the mails at least forty-eight (48) hours before the meeting; but no notice shall be necessary if at least four (4) members of the board shall be present. A majority in number of the members shall constitute a quorum and the affirmative or negative vote of four (4) members shall be necessary to bind the board.

(3) The board shall have and adopt a seal bearing its name, which seal shall be affixed to such records and other instruments as it may direct, and all courts shall take judicial notice of said seal. It is authorized to adopt from time to time, as necessary or expedient, suitable rules and regulations for the administration of this act. The attorney general shall act as legal adviser for the board and shall perform such legal services as the board may request; he shall receive his actual and necessary expenses when engaged in travel in the performance of such services. With his consent the board may employ additional legal counsel, and the board may also appoint such technical and other assistants and employees as may be necessary to enable it to perform its duties and carry out the purposes of this act, and may fix their compensation.

(4) Each appointed member of the board shall receive, as compensation for his services, the sum of twenty dollars (\$20) per day for each



day actually engaged in the performance of the duties of his office, including time of travel between his home and the place at which he performs such duties, together with actual traveling and maintenance expenses while away from his home in the performance of the duties of his office. All such compensation and expenses shall be paid solely from the funds provided under the authority of this act.

**History:** En. Sec. 3, Ch. 35, Ex. L. 1933; amd. Sec. 50, Ch. 177, L. 1965; amd. Sec. 1, Ch. 278, L. 1965; amd. Sec. 4, Ch. 158, L. 1967.

#### Amendments

Chapter 177, Laws 1965, deleted "and secure such fidelity bonds as it may deem advisable" from the end of subsection (3).

Chapter 278, Laws 1965, increased the size of the board from five to seven and the number of appointive members from three to five; substituted the director for the state engineer as an ex officio member in the former second sentence of subsection (1); inserted "with the consent of the senate" after "appointed by the governor" in the former third sentence of subsection (1); substituted the portion of the former third sentence of subsection (1) relating to appointment and terms of the first appointive members for provisions relating to appointive members whose terms expired in 1935, 1937, and 1939; changed the number of votes required to bind the board, as specified in the final sentence of subsection (2) from three to four; increased the per diem rate of appointive members, as specified near the beginning of subsection (4), from \$10 to \$25; deleted from the end of subsection

(4) a sentence reading, "The state engineer shall exercise such powers and perform such duties, in addition to his regular duties as state engineer and as the board shall prescribe, and may receive and be paid such additional salary for such additional duties as may be fixed by the board"; and made minor changes in phraseology and punctuation.

The 1967 amendment, in the first sentence of subsection (1), substituted "Montana water resources board" for "state water conservation board"; inserted the present second sentence in subsection (1); and, in subsection (4), decreased per diem of board members from \$25 to \$20.

#### Repealing Clause

Section 51 of Ch. 177, Laws 1965 read "Sections 3-407, 6-101, 6-102, 6-103, 6-104, 46-702, 66-810, 77-1004, 79-809, 82-404, 82-507, 82-1013, 82-1907, 82-2213, 92-106 and 92-107, R. C. M. 1947, are repealed."

#### Cross-References

Board abolished and functions transferred, sec. 82A-1505(1).

Bonds of state officers and employees, sec. 6-105 et seq.

**89-103.1. Director of Montana water resources board—appointment—qualifications.** There is hereby created the office of director of the state water conservation board who shall hereinafter be referred to as the "director." The director shall be appointed by the governor and shall serve at the pleasure of the governor, or until his successor shall be appointed and shall have qualified. No person shall be appointed director who has not such theoretical and such practical experience and skill as to qualify him to carry out the duties enjoined on him.

**History:** En. Sec. 1, Ch. 279, L. 1965.

#### Compiler's Notes

The state water conservation board has been redesignated the Montana water resources board. See paragraph (1), sec. 89-103 herein.

#### Title of Act

An act creating the office of director of

the state water conservation board; providing for the appointment of the director of the state water conservation board by the governor; providing for the term of office, duties of the director of the state water conservation board and limitations on such duties; and providing that nothing herein contained shall impair the lawful obligations of the state water conservation board.

**89-103.2. Powers and duties of director.** The director shall be the chief administrative office [officer] of the state water conservation board

and shall perform and execute in the name of the board all ministerial acts required of the state water conservation board by law and shall perform and execute such other duties as may be required by said board, provided that the director shall not acquire by appropriation or otherwise any water right or interest therein and shall not acquire any real property or interest therein or mortgage or otherwise create a lien on the same or dispose of in any manner any water rights or property without specific authorization from and approval of said board. The director shall not construct or cause to be constructed or contract for the construction of any works or projects without specific authorization from and approval of said board.

**History:** En. Sec. 2, Ch. 279, L. 1965.

**Compiler's Notes**

The state water conservation board has

been redesignated the Montana water resources board. See paragraph (1), sec. 89-103 herein.

**89-103.3. Salaries of director and employees of board.** The salary of the director shall be in such amount as may be specified by the legislative assembly in the appropriation to the state water conservation board. If the legislative assembly does not specify the maximum salary for the director, it shall be fixed by the state water conservation board after approval by the board of examiners. Before approving any salary increase, the board of examiners shall review the salaries of comparable positions in Montana state government, other states and private industry.

**History:** En. Sec. 3, Ch. 279, L. 1965; amd. Sec. 14, Ch. 237, L. 1967.

**Compiler's Notes**

The state water conservation board has been redesignated the Montana water resources board. See paragraph (1), sec. 89-103 herein.

**Amendments**

The 1967 amendment completely re-wrote this section. Prior to amendment

it read, "The salary of the director shall not exceed ten thousand dollars (\$10,000). No salary of an employee of the board shall exceed the salary of the director."

**Saving Clause**

Section 4 of Ch. 279, Laws 1965 read "Nothing in this act contained shall in any way impair any obligation of the state water conservation board lawfully entered into prior to the effective date of this act."

**89-103.4. Powers of Carey Land Act board and state engineer transferred to Montana water resources board.** Any duties, authority or obligation conferred or imposed by law on the Carey Land Act board or the state engineer which are not in this act otherwise provided for are hereby transferred to and conferred and imposed on the state water conservation board.

**History:** En. Sec. 17, Ch. 280, L. 1965.

**Compiler's Notes**

The state water conservation board has been redesignated the Montana water resources board. See paragraph (1), sec. 89-103 herein.

**Title of Act**

An act repealing sections 81-2006, 81-2008, 81-2010, 81-2012, R. C. M. 1947, thereby abolishing the office of state engineer; amending sections 81-2009, 81-2018, 82-3001, 89-702, 89-847, 89-848, 89-849,

89-851, 89-907, 89-908, 89-909, 89-912, 89-914, 89-1201, and 89-2911, R. C. M. 147, to provide for the transfer of certain duties of the state engineer to the state water conservation board; abolishing the Carey Land Act board; repealing sections 81-2001, 81-2002, 81-2003, 81-2004, 81-2005, 81-2007, 81-2013, 81-2015, 81-2017, 81-2101 through 81-2121, 81-2123 and 81-2125 through 81-2130, R. C. M. 1947; providing for the transfer of the book and records and funds of the Carey Land Act board and the office of the state engineer to the state water conservation board; and pro-

viding that nothing in this act contained shall impair the obligations of the state of Montana under the Yellowstone River Compact or the obligations of the state of Montana, or the state water conservation board contracted prior to the effective date of this act.

**89-103.5. Records and property transferred to Montana water resources board.** Immediately following the effective date of this act all books, records, papers, material and supplies of all kinds and nature belonging to the Carey Land Act board, or in the office of the state engineer shall be transferred to the state water conservation board.

**History:** En. Sec. 18, Ch. 280, L. 1965. been redesignated the Montana water resources board. See paragraph (1), sec. 89-103 herein.

**Compiler's Notes**  
The state water conservation board has

**89-103.6. Funds and appropriations transferred to Montana water resources board.** On the effective date of this act all funds in the state treasury which were appropriated to or available to the Carey Land Act board or the state engineer shall become available to the state water conservation board to be used for the purpose of carrying out the purposes of this act and the State Water Conservation Act.

**History:** En. Sec. 19, Ch. 280, L. 1965. been redesignated the Montana water resources board. See paragraph (1), sec. 89-103 herein.

**Compiler's Notes**  
The state water conservation board has

**89-103.7. Yellowstone compact obligations unimpaired.** Nothing in this act contained shall in any manner impair the obligations of the state of Montana under the Yellowstone River Compact.

**History:** En. Sec. 20, Ch. 280, L. 1965.

**89-103.8. State obligations unimpaired.** Nothing in this act contained shall impair any obligations of the state of Montana or the state water conservation board or the Carey Land Act board lawfully entering to [entered into], assumed or contracted for prior to the effective date of this act.

**History:** En. Sec. 21, Ch. 280, L. 1965.

**Compiler's Notes**

The state water conservation board has been redesignated the Montana water resources board. See paragraph (1), sec. 89-103 herein.

**Repealing Clause**

Section 22 of Ch. 280, Laws 1965 read "Sections 81-2001, 81-2002, 81-2003, 81-2004, 81-2005, 81-2007, 81-2013, 81-2015, 81-2017, 81-2101 through 81-2121, 81-2123 and 81-2125 through 81-2130, R. C. M. 1947, are repealed."

**89-118. (349.15) Powers and duties of board—actions at law. (1).**  
\* \* \* [Same as parent volume.]

(2) The board shall have power to institute in any of the courts of this state, or in any other state, or in any of the federal courts of this state or any other state, any actions, suits, and special proceedings necessary to enable it to acquire, own, and hold title to lands for dam sites, reservoir sites, water rights, rights of way for diversion and distributing canals, and lateral ditches, and other means of distribution of water, and may also in all said courts institute, maintain, and prosecute to final determination any and all actions, suits and special proceedings necessary



to have the water rights adjudicated upon any stream or source of water supply from which is derived the water for such reservoir, diversion and distributing canals, lateral ditches and other means of distribution of the water; and said board may join any and all owners of waters heretofore appropriated by any person, association or corporation from any of the streams of the state of Montana, so that adjudication may be had of all surplus water upon all the streams and sources of water supply of any project so constructed by said board. All costs and expenses of such actions, suits or special proceedings shall be paid by said board out of funds provided under the authority of this act.

**History:** En. Sec. 14, Ch. 35, Ex. L. 1933; amd. Sec. 43, Ch. 177, L. 1965.

furnish a bond in the form and to the amount that shall be required by said board."

#### **Amendment**

The 1965 amendment deleted from subsection (2) a second paragraph reading, "The vice-chairman of the board, who shall act as secretary and treasurer, shall

#### **Cross-References**

Bonds of state officers and employees, sec. 6-105 et seq.

### **89-132. (349.29) Powers of board to carry out policy of state, etc.**

#### **Cross-Reference**

Flood control projects of cities, towns and counties, secs. 89-3301 to 89-3313.

**89-132.1. Additional powers and duties of the board.** In addition to any other power or duty authorized or imposed by provisions of this code, the board shall be empowered, and a duty is hereby enjoined thereon, to:

(1) Gather from any source reliable information relating to Montana's water resources, and prepare therefrom a continuing comprehensive inventory of the water resources of the state. In preparing said inventory, the board may conduct studies, adopt studies made by other competent water resource groups including federal, regional, state or private agencies, perform research or employ other competent agencies to perform research on a contract basis, and hold public hearings in affected areas at which all interested parties shall be given an opportunity to appear.

(2) Formulate and adopt, and from time to time amend, extend or add to, a comprehensive, co-ordinated multiple-use water resources plan, known as the "state water plan." Said state water plan may be formulated and adopted in sections, said sections corresponding with hydrologic divisions of the state. The state water plan shall set out a progressive program for the conservation, development and utilization of the state's water resources, propose the most effective means by which these water resources may be applied for the benefit of the people, with due consideration of alternative uses and combinations of uses. Before adoption of the state water plan, or any section thereof, the board shall hold public hearings in the state, or in an area of the state encompassed by a section thereof if adoption of a section is proposed. Notice of said hearing or hearings shall be published for two (2) consecutive weeks in a newspaper of general county circulation in each county encompassed by the

proposed plan or section thereof at least thirty (30) days prior to said hearing.

(3) Submit to each general session of the legislature the state water plan or any section thereof or amendments, additions or revisions thereto which the board shall have formulated and adopted.

(4) Prepare a continuing inventory of the ground-water resources of the state. Said ground-water inventory shall be included in the comprehensive water resources inventory described in subsection (1) above, but shall be a separate component thereof.

(5) Publish the comprehensive inventory, the state water plan, the ground-water inventory, or any part of each, and may assess and collect a reasonable charge for said publications.

(6) Promulgate rules and regulations necessary to effect the purposes of this act.

History: En. Sec. 5, Ch. 158, L. 1967.

### CHAPTER 3—WEATHER MODIFICATION ACTIVITIES

- Section 89-310. Weather modification defined.  
 89-311. Montana water resources board responsible for administration—expenses of members.  
 89-312. Advisory committees—acquisition of property—acceptance and expenditure of funds.  
 89-313. License and permit required for weather modification and control.  
 89-314. Board to review applications—exemptions from fee requirements.  
 89-315. Issuance of license—qualifications of licensees.  
 89-316. Term of license—renewal.  
 89-317. License fee.  
 89-318. Issuance of permits—requirements for permit.  
 89-319. Separate permit for each operation.  
 89-320. Notice of intention to apply for permit—activities limited by terms of permit.  
 89-321. Contents of notice of intention.  
 89-322. Publication of notice of intention.  
 89-323. Proof of financial responsibility by applicant.  
 89-324. Permit fee—time of payment.  
 89-325. Account in agency fund—fees used to pay expenses.  
 89-326. Records of operations maintained by licensees.  
 89-327. Reports of operations.  
 89-328. Records and reports open to public.  
 89-329. Termination of licenses and permits by board.  
 89-330. State and agents not liable for acts of private persons.  
 89-331. Violation as misdemeanor—continuing violations.

89-301 to 89-309. (349.54 to 349.62) Repealed.

#### Repeal

These sections (Secs. 1 to 9, Ch. 176, L. 1935), relating to development of state

resources by the state planning board, were repealed by Sec. 10, Ch. 19, Laws 1967.

**89-310. Weather modification defined.** As used in this act unless the context clearly indicates otherwise "weather modification and control" means changing or controlling, or attempting to change or control, by artificial methods, the natural development of any or all atmospheric cloud forms or precipitation forms which occur in the troposphere.

History: En. Sec. 1, Ch. 20, L. 1967.

#### Title of Act

An act to control weather modification

activities and designating the state water conservation board as the agency to administer this act.

**89-311. Montana water resources board responsible for administration—expenses of members.** The state water conservation board, hereafter referred to as the "board," is the state agency responsible for administration of this act. Members of the board shall receive no compensation for the performance of their duties under the provisions of this act but shall be reimbursed for expenses necessarily incurred.

**History:** En. Sec. 2, Ch. 20, L. 1967. been redesignated the Montana water resources board. See paragraph (1), sec. 89-103 herein.

**Compiler's Notes**

The state water conservation board has

**89-312. Advisory committees—acquisition of property—acceptance and expenditure of funds.** In addition to any other acts authorized by law the board may:

(1) establish advisory committees to advise with and make recommendations to the board concerning legislation, policies, administration, research, and other matters;

(2) acquire materials, equipment and facilities as are necessary to perform its duties under this act;

(3) receive any funds which may be offered or become available from federal grants or appropriations, private gifts, donations, bequests, or any other source and unless their use is restricted, may expend the funds for the administration of this act.

**History:** En. Sec. 3, Ch. 20, L. 1967. **Cross-References**

Weather modification advisory committee abolished, sec. 82A-1511(3).

**89-313. License and permit required for weather modification and control.** No person shall engage in activities for weather modification and control except under, and in accordance with, a license and a permit issued by the board authorizing such activities.

**History:** En. Sec. 4, Ch. 20, L. 1967.

**89-314. Board to review applications—exemptions from fee requirements.** The board shall review all applications for weather modification activity, and may provide by rule for exempting from the license and permit fees:

(1) research, development, and experiments by state and federal agencies, institutions of higher learning and bona fide nonprofit research organizations and their agents;

(2) laboratory research and experiments;

(3) activities of an emergency character for protection against fire, frost, sleet, or fog; and

(4) activities normally engaged in for purposes other than those of inducing, increasing, decreasing, or preventing precipitation or hail.

**History:** En. Sec. 5, Ch. 20, L. 1967.

**89-315. Issuance of license—qualifications of licensees.** The license to engage in activities for weather modification and control shall be issued, in accordance with procedures and subject to conditions the board may by rule establish to effectuate the provisions of this act, to applicants



who demonstrate competence in the field of meteorology to the satisfaction of the board. If the applicant is an organization, these requirements must be met by the individual who will be in charge of the operation for the applicant.

History: En. Sec. 6, Ch. 20, L. 1967.

**89-316. Term of license—renewal.** The license shall be issued for a period to expire at the end of the calendar year in which it is issued and, if the licensee possesses the qualifications necessary for the issuance of a new license, shall upon application be renewed at the expiration of the period.

History: En. Sec. 7, Ch. 20, L. 1967.

**89-317. License fee.** A license shall be issued or renewed only upon the payment to the board of one hundred dollars (\$100) for the license or renewal.

History: En. Sec. 8, Ch. 20, L. 1967.

**89-318. Issuance of permits—requirements for permit.** The permits shall be issued in accordance with procedures and subject to conditions the board may by rule establish to effectuate the provisions of this act, only:

- (1) if the applicant is licensed pursuant to this act;
- (2) if sufficient notice of intention is published and proof of publication is filed as required in section 13 [89-322] of this act;
- (3) if an applicant furnishes proof of financial responsibility in an amount to be determined by the board as required in section 14 [89-323] of this act;
- (4) if the fee for the permit is paid as required in section 15 [89-324] of this act;
- (5) if the weather modification and control activities to be conducted are determined by the board to be for the general welfare and the public good;
- (6) if the board has held an open public hearing in the area to be affected as to such issuance.

History: En. Sec. 9, Ch. 20, L. 1967.

**89-319. Separate permit for each operation.** "Operation" means the performance of weather modification and control activities entered into for the purpose of producing or attempting to produce, a certain modifying effect within one (1) geographical area over one continuing time interval not exceeding one (1) year.

History: En. Sec. 10, Ch. 20, L. 1967.

**89-320. Notice of intention to apply for permit—activities limited by terms of permit.** Prior to undertaking any weather modification and control activities, the applicant for a permit shall file with the board, and also have published, a notice of intention. If a permit is issued, the holder

of the permit shall confine his activities to the time and area limits set forth in the notice of intention, unless modified by the board. His activities shall conform to any conditions imposed by the board. The permit may not be sold or transferred.

History: En. Sec. 11, Ch. 20, L. 1967.

**89-321. Contents of notice of intention.** The notice of intention shall set forth at least the following:

- (1) the name and address of the applicant;
- (2) the nature, purpose, and objective of the intended operation and the person or organization on whose behalf it is to be conducted;
- (3) the area in which, and the approximate time during which, the operation will be conducted;
- (4) the area which is intended to be affected by the operation;
- (5) the materials and methods to be used in conducting the operation.

History: En. Sec. 12, Ch. 20, L. 1967.

**89-322. Publication of notice of intention.** (1) The applicant shall have notice of intention, or that portion thereof including the items specified in section 12 [89-321] of this act, published at least once a week for two (2) consecutive weeks in a newspaper having a general circulation and published within any county in which the operation is to be conducted and in which the affected area is located, or, if the operation is to be conducted in more than one (1) county or if the affected area is located in more than one (1) county or is located in a county other than the one in which the operation is to be conducted, then in newspapers having a general circulation and published within each of the counties.

(2) Proof of publication, made in the manner provided by law, shall be filed by the applicant with the board sooner than the sixteenth day after the date of the last publication of the notice.

History: En. Sec. 13, Ch. 20, L. 1967.

**89-323. Proof of financial responsibility by applicant.** Proof of financial responsibility may be furnished by an applicant by his showing, to the satisfaction of the board, ability to respond in damages for liability which might reasonably be attached to, or result from, his weather modification and control activities.

History: En. Sec. 14, Ch. 20, L. 1967.

**89-324. Permit fee—time of payment.** The fee to be paid by each applicant for a permit shall be equivalent to one per cent (1%) of the estimated cost of such operation, the estimated cost to be computed by the board from the evidence available to it. The fee is due and payable to the board as of the date of issuance of the permit; however, if the applicant is able to give satisfactory security for the payment of the balance he may be permitted to commence the operation, and a permit may be issued therefor, upon the payment of not less than fifty per cent (50%) of the fee. The balance due shall be paid within three (3) months from the date of termination of the operation as prescribed in the permit.

History: En. Sec. 15, Ch. 20, L. 1967;  
amd. Sec. 1, Ch. 151, L. 1969.

**Amendments**

The 1969 amendment substituted "one per cent (1%)" for "one and one-half per cent (1½%)" in the first sentence.

**89-325. Account in agency fund—fees used to pay expenses.** There is established an account in the agency fund to be known as the "weather modification board account." All license and permit fees paid to the board shall be deposited in this account and used to pay the expenses of administering this act.

History: En. Sec. 16, Ch. 20, L. 1967.

**89-326. Records of operations maintained by licensees.** Every licensee shall keep and maintain a record of all operations conducted by him under his license and each permit, showing:

- (1) the method employed;
- (2) type of equipment used;
- (3) kinds and amounts of material used;
- (4) times and places of operation of the equipment;
- (5) names and addresses of all individuals participating or assisting in the operation;
- (6) any other general information as the board may require.

History: En. Sec. 17, Ch. 20, L. 1967.

**89-327. Reports of operations.** The board shall require written reports, in a manner as it provides, of each operation for which a permit is issued. The board shall also require reports from any organization that is exempt from license and permit requirements as provided in section 5 [89-314] of this act.

History: En. Sec. 18, Ch. 20, L. 1967.

**89-328. Records and reports open to public.** The records and reports in the custody of the board shall be open for public examination.

History: En. Sec. 19, Ch. 20, L. 1967.

**89-329. Termination of licenses and permits by board.** After notice to the licensee and a reasonable opportunity for a hearing, the board may modify, suspend, revoke, or refuse to renew, any license or permit issued if it appears that the licensee no longer possesses the qualifications necessary or if it appears that the licensee has violated any of the provisions of this act; or in the case of a modification, that it is necessary for the protection of the health or the property of any person.

History: En. Sec. 20, Ch. 20, L. 1967.

**89-330. State and agents not liable for acts of private persons.** Nothing in this act shall be construed to impose or accept any liability or responsibility on the part of the state, the board, or any state officials or employees for any weather modification and control activities of any private person or group.

History: En. Sec. 21, Ch. 20, L. 1967.

**89-331. Violation as misdemeanor—continuing violations.** A person violating any provision of this act is guilty of a misdemeanor, and a con-



tinuing violation is punishable as a separate offense for each day during which it occurs.

**History:** En. Sec. 22, Ch. 20, L. 1967. parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applica-

**Separability Clause**

Section 23 of Ch. 20, Laws 1967 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid valid applications that are severable from the invalid applications."

## CHAPTER 7—DAMS AND RESERVOIRS—CONSTRUCTION AND EXAMINATION OF

Section 89-702. Dams and dikes to be constructed in a secure manner—proceedings upon complaint of insecurity.

### 89-702.1. Jurisdiction of board.

**89-702. (2659) Dams and dikes to be constructed in a secure manner—proceedings upon complaint of insecurity.** No person, association, or corporation shall construct, or cause to be constructed, a dam or dike for the purpose of accumulating, storing, appropriating, or diverting any of the waters of this state, except in a thorough, secure, and substantial manner.

The Montana water resources board, at any time, on its own motion or upon complaint on oath being made to the state water resources board by three or more persons residing or having property in such location, that their homes or property would be in danger of destruction or damage in event of flood occurring on account of the breaking of any dam or dike of any reservoir within the state, and that they have reason to believe said reservoir is in an unsafe condition, or that it is being filled with water to such an extent as to render it unsafe, it shall be the duty of the state water resources board to forthwith examine, or cause to be examined, the said reservoir. If, upon such examination, the state water resources board shall find that said reservoir is unsafe, or is being filled with water to such an extent as to render it unsafe, it shall notify the county attorney of the county in which the reservoir is located, setting forth its findings, and the county attorney shall immediately take the necessary steps to abate the danger and make the structure safe.

In the event of either party being dissatisfied with the findings of the state water resources board, it may take an appeal to the district court of the district wherein the reservoir is located, and said court shall hear and determine the matter at the earliest practical time, subject to the right of either party to take an appeal as in other civil cases; provided, that the judgment of the state water resources board shall control until the final determination of the case.

**History:** Sec. 2139, Rev. C. 1907; amd. Sec. 1, Ch. 168, L. 1917; re-en. Sec. 2659, R. C. M. 1921; amd. Sec. 5, Ch. 280, L. 1965; amd. Sec. 1, Ch. 370, L. 1971. The 1971 amendment inserted "The Montana water resources board, at any time, on its own motion or" in the beginning of the second paragraph; and substituted "state water resources board" for "state water conservation board" in five places.

### Amendments

The 1965 amendment substituted "state water conservation board" for "state engineer" in five places; and made minor changes in phraseology.

**89-702.1. Jurisdiction of board.** Jurisdiction of the water resources board applies to any dam or dike which does or will impound or divert water and which has or will have an impounding capacity at the water storage elevation of one hundred (100) acre feet or more.

**History:** En. Sec. 2, Ch. 370, L. 1971. sources board, upon its own motion, to inspect and determine safety of dams or dikes; amending section 89-702, R. C. M., 1947.

**Title of Act**

An act to allow the Montana water re-

## CHAPTER 8—WATER RIGHTS—APPROPRIATION AND ADJUDICATION

- Section 89-801. What waters may be appropriated.  
 89-801.1. Established rights of use unaffected.  
 89-801.2. Notice of appropriation.  
 89-813. Record of declaration.  
 89-847. Declaration of policy as to adjudication of waters of the state.  
 89-848. Montana water resources board may bring action to adjudicate waters.  
 89-849. Appointment of referee to take testimony.  
 89-851. Duties of Montana water resources board—scope of examination of streams—surveys, reports, maps and plats may be introduced as evidence.

**89-801. What waters may be appropriated.** (1) The right to the use of the unappropriated water of any river, stream, ravine, coulee, spring, lake, or other natural source of supply may be acquired by appropriation, and an appropriator may impound flood, seepage, and waste waters in a reservoir and thereby appropriate the same.

(2) But the unappropriated waters of the streams and portions of streams hereafter named shall be subject to appropriation by the fish and game commission of the state of Montana in such amounts only as may be necessary to maintain stream flows necessary for the preservation of fish and wildlife habitat. Such uses shall have a priority of right over other uses until the district court in which lies the major portions of such stream or streams shall determine that such waters are needed for a use determined by said court to be more beneficial to the public. The unappropriated water of other streams and rivers not named herein may be set aside in the future for appropriation by the fish and game commission upon consideration and recommendation of the water resources board, fish and game commission, state soil conservation committee, the state board of health and approval of the legislature.

(a) Big Spring creek in Fergus county from its mouth in T17N, R16E, Sec. 26 to the state fish hatchery in T14W, R19E, Sec. 5.

(b) Blackfoot river in Missoula and Powell counties from its mouth in T13N, R18W, Sec. 21 to the mouth of its North Fork in T14N, R12W, Sec. 9.

(c) Flathead river in Flathead county from its mouth in T27N, R20W, Sec. 34 to the Canadian border in T37N, R22W, Sec. 4 & 5, including the section commonly known as the North Fork of the Flathead river.

(d) Gallatin river in Gallatin county from its mouth in T2N, R2E, Sec. 9 to the junction of its East Fork in T2N, R3E, Sec. 27.

(e) Gallatin river in Gallatin county (commonly called the West Gallatin) from the Beck & Border ditch intake in T2S, R4E, Sec.

14, to where it leaves the Yellowstone Park boundary in T9S, R5E, Sec. 18.

(f) Madison river in Madison and Gallatin counties from its mouth in T2N, R2E, Sec. 17 to Hebgen dam in T11S, R3E, Sec. 23.

(g) Missouri river in Lewis and Clark, Broadwater and Cascade counties from its junction with the Smith river in T19N, R2E, Sec. 9 to Toston dam in T4N, R3E, Sec. 7.

(h) Rock creek in Granite and Missoula counties from its mouth in T11N, R17W, Sec. 12 to the junction of its East and West Forks in T6N, R15W, Sec. 31.

(i) Smith river in Cascade and Meagher counties from the mouth of Hound creek in T17N, R3E, Sec. 20 to the Fort Logan bridge in T11N, R5E, Sec. 31.

(j) Yellowstone river in Stillwater, Sweetgrass and Park counties from the North-South Carbon-Stillwater county lines in T3S, R21E, Sec. 10 to where it leaves the Yellowstone Park boundary in T9S, R8E, Sec. 23.

(k) Middle Fork Flathead river in Flathead county from its mouth in T31N, R19W, Sec. 7 to the mouth of Cox creek in T27N, R12W, (a nonsectioned township).

(l) South Fork Flathead river in Flathead and Powell counties from its mouth at Hungry Horse reservoir in T26W, R16W, Sec. (unknown), to its source at the junction of Danaher and Youngs creeks in T20W, R13W, Sec. 36.

**History:** Ap. p. Sec. 1, p. 130, L. 1885; re-en. Sec. 1250, 5th Div. Comp. Stat. 1887; amd. Sec. 1880, Civ. C. 1895; en. Sec. 1, p. 152, L. 1901; re-en. Sec. 4840, Rev. C. 1907; amd. Sec. 1, Ch. 228, L. 1921; re-en. Sec. 7093, R. C. M. 1921; amd. Sec. 1, Ch. 345, L. 1969. Cal. Civ. C. Sec. 1410.

#### Amendments

The 1969 amendment designated the former section as subsection (1) and added subsection (2).

**89-801.1. Established rights of use unaffected.** Nothing herein contained shall in any way affect or diminish any rights to the use of the waters of such streams or portions of streams heretofore established nor any legal or statutory rights given in connection with such established uses.

**History:** En. Sec. 2, Ch. 345, L. 1969.

#### Title of Act

An act amending section 89-801, R. C. M. 1947, by reserving all the un-

appropriated water from certain enumerated streams for fishing and wildlife purposes except for future appropriations for municipal and individual water supplies.

**89-801.2. Notice of appropriation.** The appropriation hereby authorized shall be made by filing a written notice of appropriation in the office of the county clerk and recorder of each county through which flows the river on which the appropriation is made, and by filing a copy of such notice with the director of the Montana water resources board. The notice shall state the quantity of water claimed, measured



as provided in Title 89, R. C. M. 1947, the purpose for which it is claimed, the name of the appropriator, and the date of appropriation.

History: En. Sec. 3, Ch. 345, L. 1969.

#### 89-803. (7095) Point of diversion may be changed—change of use.

##### Clearing Irrigation Ditch

Servient landowners did not have a right to relief where changes caused by a dozer in clearing irrigation ditch would not be considered substantial changes or

material alterations if they involved minor meandering along the course to account for topographical adjustments in the terrain. *Shammel v. Vogl*, 144 M 354, 396 P 2d 103, 109.

#### 89-810. (7100) Notice of appropriation.

##### Verification of Notice

Where verification of notice of appropriation was not completed as prescribed by this section, the notice on the record

was not duly made, and was not entitled to prima facie evidentiary value under section 89-814. *Shammel v. Vogl*, 144 M 354, 396 P 2d 103, 111.

**89-813. (7103) Record of declaration.** Persons who have heretofore acquired rights to the use of water shall, within six (6) months after the publication of this chapter, file in the office of the county clerk of the county in which the water right is situated, a declaration in writing, except notice be already given of record as required by this chapter, or a declaration in writing be already filed as required by this section, containing the same facts as required in the notice provided for record in section 89-810 of this chapter, and verified as required in said last-mentioned section, in cases of notice of appropriation of water; provided, that a failure to comply with the requirements of this section shall in nowise work a forfeiture of such heretofore acquired rights, or prevent any such claimant from establishing such rights in the courts. From and after July 1, 1967, the county clerk and recorder shall forward to the water resources board a copy of any instrument of water appropriation or instrument transferring any water appropriation which is filed as provided in this section.

History: En. Sec. 9, p. 132, L. 1885; re-en. Sec. 1258, 5th Div. Comp. Stat. 1887; re-en. Sec. 1889, Civ. C. 1895; re-en. Sec. 4850, Rev. C. 1907; re-en. Sec. 7103, R. C. M. 1921; amd. Sec. 6, Ch. 158, L. 1967.

##### Amendments

The 1967 amendment added the last sentence.

##### Repealing Clause

Section 7 of Ch. 158, Laws 1967 read "Section 89-101, R. C. M. 1947, is repealed."

#### 89-814. (7104) Record prima facie evidence.

##### Defective Verification of Notice of Appropriation

Where verification of notice of appropriation was not completed as prescribed by section 89-810 the notice on the record

was not duly made and was not entitled to prima facie evidentiary value under this section. *Shammel v. Vogl*, 144 M 354, 396 P 2d 103, 111.

#### 89-820. (7110) Right to construct dams and raise water, etc.

##### Prescriptive Easement

This section has no application in case of prescriptive easement in water right since dominant tenement will not be re-

quired to pay for an easement acquired by prescription. *O'Connor v. Brodie*, 153 M 129, 454 P 2d 920.

**89-821, 89-822. (7111, 7112) Repealed.****Repeal**

These sections (Secs. 10, 11, p. 58, L. 1870), relating to ditches, dikes, flumes

and canals crossing highways, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

**89-847. Declaration of policy as to adjudication of waters of the state.** It is hereby declared to be the policy of this state and necessary for the welfare of the state and its citizens, that the waters of this state and especially interstate streams arising out of the state be investigated and adjudicated as soon as possible in order to protect the rights of water users in this state and negotiate interstate compacts in relation thereto, and that the state water conservation board make investigations to secure necessary information and initiate and carry on actions therefor.

**History:** En. Sec. 1, Ch. 185, L. 1939; amd. Sec. 6, Ch. 280, L. 1965.

**Amendment**

The 1965 amendment deleted "and state engineer" after "state water conservation board" in the final clause.

**Compiler's Notes**

The state water conservation board has been redesignated the Montana water resources board. See paragraph (1), sec. 89-103 herein.

**89-848. Montana water resources board may bring action to adjudicate waters.** The state water conservation board is hereby authorized to bring action to adjudicate the waters of any stream or of any stream and its tributaries in any county traversed by said stream.

**History:** En. Sec. 2, Ch. 185, L. 1939; amd. Sec. 7, Ch. 280, L. 1965.

**Amendment**

The 1965 amendment substituted "The state water conservation board" for "At the direction of the state water conservation board the state engineer" at the beginning of the section.

**Compiler's Notes**

The state water conservation board has been redesignated the Montana water resources board. See paragraph (1), sec. 89-103 herein.

**89-849. Appointment of referee to take testimony.** In said actions the state water conservation board, or in any action pending for the adjudication of a water right, any party thereto, may make application to the court for the appointment of some competent person or persons to act as a referee or referees in said cause and to take testimony therein, and the court may appoint a referee or referees who shall proceed as herein set forth. In said order of reference the court may submit to said referee or referees any or all issues of fact in said cause.

**History:** En. Sec. 3, Ch. 185, L. 1939; amd. Sec. 8, Ch. 280, L. 1965.

**Amendment**

The 1965 amendment deleted "the state engineer, upon direction of" after "In said actions" at the beginning of the section.

**Compiler's Notes**

The state water conservation board has been redesignated the Montana water resources board. See paragraph (1), sec. 89-103 herein.

**89-851. Duties of Montana water resources board—scope of examination of streams—surveys, reports, maps and plats may be introduced as evidence.** The state water conservation board shall either before or

after the bringing of such action do all things, make all surveys, and perform all services required by said board in the securing of all necessary information and making same available to persons who may be interested therein including the courts of this state. The state water conservation board or some qualified employee may proceed to make an examination of any stream or streams as required by said board and the works diverting therefrom, said examination to include the measurement of the discharge of said stream and of the carrying capacity of the various ditches and canals, and examination of the irrigated lands and an approximate measurement of the lands irrigated from the various ditches and canals, and to take such other steps and gather such other data and information as may be essential to the proper understanding of the relative rights of the parties interested, which said observation and measurement shall be reduced to writing and made a matter of record, and it shall be the duty of the state water conservation board to make or cause to be made such maps or plats thereof as deemed necessary or shall be required. Any or all such surveys, reports, maps and plats may be furnished to the judge of said court or the referee or referees mentioned herein and may be introduced as evidence in such proceedings; provided that the costs and expenses incurred in carrying out the provisions of this section shall be paid by the state water conservation board.

**History:** En. Sec. 5, Ch. 185, L. 1939; amd. Sec. 9, Ch. 280, L. 1965.

#### Compiler's Notes

The state water conservation board has been redesignated the Montana water resources board. See paragraph (1), sec. 89-103 herein.

#### Amendment

The 1965 amendment substituted "state water conservation board" for "state engineer" at the beginning of the section, at the beginning of the second sentence, and near the end of the second sentence; deleted "upon direction of the state water

conservation board or upon the direction of the court" before "do all things" in the first sentence; substituted "persons" for "said board or others" near the end of the first sentence; substituted "employee" for "assistant" near the beginning of the second sentence; deleted "at his office" after "matter of record" in the second sentence; deleted "by said board, and to file with said board a detailed report and copies of such maps or plats covering such information so acquired by him" at the end of the second sentence; and made other minor changes in phraseology.

### CHAPTER 9—YELLOWSTONE RIVER COMPACT—RATIFICATION OF

- Section 89-907. Filing written statement with Montana water resources board.
- 89-908. Duty to install weir or other measuring device.
- 89-909. Duty to measure water.
- 89-912. Montana water resources board to make rules and regulations.
- 89-914. Montana water resources board to make record available.

**89-907. Filing written statement with Montana water resources board.**  
Any person claiming an appropriative right to the use of any water of any interstate tributary which right was acquired after January 1, 1950, shall within sixty days after the approval of this act, or before he diverts any water, file with the state water conservation board at its office in Helena, Montana, a written statement containing the following information:

- (a) The name of the claimant and his address.
- (b) Date of appropriation or the date when the water was first applied to a beneficial use.



(c) The quantity of water claimed.

(d) The name of the stream, river or other source of water from which the diversion is made, if it has a name, and if it does not, such a description as will identify the same.

(e) The purpose for which the water is claimed and the place of intended use.

(f) The means of diversion.

(g) Whether or not a weir or other device for measuring the water intended to be diverted has been installed in his ditch or other means of diversion.

(h) If a notice of appropriation was filed with the county clerk and recorder, as provided by section 89-810, the name of the county where it was filed.

(i) Whether the appropriation was made from an adjudicated or nonadjudicated stream, river or other source of water.

The written statement shall be verified by the affidavit of the claimant or someone in his behalf, which affidavit must state that the matters and facts contained in the written statement are true.

**History:** En. Sec. 3, Ch. 92, L. 1953;  
amd. Sec. 10, Ch. 280, L. 1965.

#### **Amendment**

The 1965 amendment substituted "state water conservation board" for "state engineer" in the first paragraph; and made a minor change in phraseology.

#### **Compiler's Notes**

The state water conservation board has been redesignated the Montana water resources board. See paragraph (1), sec. 89-103 herein.

**89-908. Duty to install weir or other measuring device.** Any person claiming an appropriative right to use any waters of any interstate tributary of the Yellowstone river which right was acquired subsequently to January 1, 1950, shall, after the approval of this act and before he diverts any such water, install in his ditch, or other means of diversion, a weir or other measuring device so that all of the water to be diverted by him can be accurately measured. The installation of a weir or other measuring device is subject to the approval of the state water conservation board, and if in its judgment such weir or other measuring device, or the installation of the same, is defective so that the water cannot be accurately measured, it may order the installation of an accurate measuring device and the claimant shall not divert any water until he complies with such order.

**History:** En. Sec. 4, Ch. 92, L. 1953;  
amd. Sec. 11, Ch. 280, L. 1965.

#### **Amendment**

The 1965 amendment substituted "state water conservation board" for "state engineer" in the second sentence; and made minor changes in phraseology.

#### **Compiler's Notes**

The state water conservation board has been redesignated the Montana water resources board. See paragraph (1), sec. 89-103 herein.

**89-909. Duty to measure water.** It shall be the duty of every said claimant to measure all the water being diverted by him and to keep accurate records thereof on forms prescribed and furnished by the state

water conservation board, and within fifteen days after the first day of November of each year to file such written records with the state water conservation board at its office in Helena, Montana.

**History:** En. Sec. 5, Ch. 92, L. 1953; amd. Sec. 12, Ch. 280, L. 1965.

#### Compiler's Notes

The state water conservation board has been redesignated the Montana water resources board. See paragraph (1), sec. 89-103 herein.

#### Amendment

The 1965 amendment substituted "state water conservation board" for "state engineer" in two places; and made a minor change in phraseology.

**89-912. Montana water resources board to make rules and regulations.** The state water conservation board shall prescribe and enforce reasonable rules and regulations consistent with this act and the Yellowstone River Compact.

**History:** En. Sec. 8, Ch. 92, L. 1953; amd. Sec. 13, Ch. 280, L. 1965.

#### Compiler's Notes

The state water conservation board has been redesignated the Montana water re-

sources board. See paragraph (1), sec. 89-103 herein.

#### Amendment

The 1965 amendment substituted "state water conservation board" for "state engineer."

**89-914. Montana water resources board to make record available.** The state water conservation board shall furnish and make available to the Yellowstone river compact commission, from the records filed in its office, all appropriate rights to the use of the waters of the interstate tributaries of the Yellowstone river in the state of Montana, acquired after January 1, 1950, the amount of the annual diversions from said interstate tributaries and any other information that its records may disclose as may be required by the Yellowstone river compact commission.

**History:** En. Sec. 10, Ch. 92, L. 1953; amd. Sec. 14, Ch. 280, L. 1965.

#### Compiler's Notes

The state water conservation board has been redesignated the Montana water resources board. See paragraph (1), sec. 89-103 herein.

#### Amendment

The 1965 amendment substituted "state water conservation board" for "state engineer"; and made minor changes in phraseology.

## CHAPTER 10—WATER COMMISSIONERS—DETERMINATION OF JOINT RIGHTS

**89-1001. (7136) Appointment of water commissioners—authority, etc.**

#### References

Allen v. Wampler, 143 M 486, 392 P 2d 82.

**89-1015. (7150) Complaint by dissatisfied user—procedure on.**

#### Purpose of Summary Proceeding

The district court had no authority in a proceeding under this section to approve a method of distribution which changed the point of diversion of water to a tract and changed the transportation ditch

thereto, as the only function of the court in such a proceeding is to determine whether the water involved is being allocated in compliance with existing decrees and not to decree new water rights. Allen v. Wampler, 143 M 486, 392 P 2d 82.

## CHAPTER 12—IRRIGATION DISTRICTS—ORGANIZATION

Section 89-1201. Creation of irrigation districts—percentage of titleholders required—what constitutes evidence of title—report of Montana water resources board—payment of expenses.

89-1208. Compensation of commissioners—penalty for interest in contract—bonds of commissioners.

89-1201. (7166) Creation of irrigation districts—percentage of titleholders required—what constitutes evidence of title—report of Montana water resources board — payment of expenses. (1) and (2). \* \* \* [Same as parent volume.]

(3) Before any such district shall be established, there shall be presented to the district court at the hearing on the petition for such establishment, a written report or opinion from the state water conservation board on the engineering features involved and the possibilities of water supplies accompanied by a copy of the decree of the district court showing the adjudicated water rights in said streams from which said waters are to be diverted. For this purpose, a copy of the petition provided for in section 89-1202 and of all maps and other papers filed with the same, shall be filed with the state water conservation board at the time the original petition is filed with the clerk of the district court. The expense, if any, incurred by the state water conservation board in the investigation and report upon the proposed district shall be certified, with the report, and that said board shall, within a period of one hundred twenty days from the filing of said petition with the state water conservation board, render its report, as herein provided, to the said district court, and shall be assessed as costs in said hearing, which costs shall be paid by the district in event of its establishment and in event such petition be denied, then such costs shall be paid by the petitioners; provided, however, that such report or opinion shall be not requested or obtained, and shall not be necessary, whenever it is proposed to co-operate with the United States under the federal reclamation laws heretofore or hereafter enacted, or under any act of Congress which shall permit of the performance by the United States of work in this state, for the purposes of construction of irrigation works, including drainage works, or for purchase, extension, operation or maintenance of constructed works, or for the assumption, as principal or guarantor, of indebtedness to the United States on account of district laws.

**History:** The first irrigation district act was Ch. 70, L. 1907, appearing as Secs. 2309-2402, Rev. C. 1907; repealed by Ch. 146, L. 1909.

This section en. Sec. 1, Ch. 146, L. 1909; amd. Sec. 1, Ch. 153, L. 1917; amd. Sec. 1, Ch. 116, L. 1919; re-en. Sec. 7166, R. C. M. 1921; amd. Sec. 1, Ch. 157, L. 1923; amd. Sec. 1, Ch. 112, L. 1925; amd. Sec. 15, Ch. 280, L. 1965.

sources board. See paragraph (1), sec. 89-103 herein.

#### Amendment

The 1965 amendment substituted "the state water conservation board" or "said board" for "the state engineer" or "said engineer" in five places in subsection (3); deleted "(other than his salary)" which followed "incurred by the state engineer" near the beginning of the third sentence of subsection (3); and made other minor changes in phraseology in subsection (3).

#### Compiler's Notes

The state water conservation board has been redesignated the Montana water re-



**89-1208. (7173) Compensation of commissioners—penalty for interest in contract—bonds of commissioners.** The commissioners, when sitting as a board or when engaged in the business of the district, shall each receive not to exceed ten dollars (\$10.00), per day for services, and, in addition thereto, their necessary expenses in attending meetings, or when otherwise engaged on district business, including premiums on qualifying bonds and any other bonds required of them in connection with their office, provided such expenses and per diem be approved by a unanimous vote of said board.

No commissioner or any other officer named in this act shall in any manner be interested directly or indirectly, in any contract awarded or to be awarded by the board, or in the profits derived therefrom; and for any violation of this provision, such officer shall be deemed guilty of a misdemeanor and his conviction thereof shall work forfeiture of his office and he shall be punished by a fine not exceeding five hundred dollars (\$500.00), or by imprisonment in the county jail not exceeding six (6) months or by both such fine and imprisonment.

The commissioners of said irrigation district shall each furnish a bond in the penal sum of twenty-five hundred dollars (\$2500.00), with corporate surety conditioned for the faithful performance of their duties under this act, and the secretary shall furnish bond, with corporate surety, in the sum of one thousand dollars (\$1000.00), conditioned for the faithful performance of his duties pursuant to this act, and for the proper and safekeeping of the records and documents of said district, in all cases where the obligations of said district, either existing or proposed, total two hundred and fifty thousand dollars (\$250,000.00) or over. In all other cases the bond for said commissioners shall be in the sum of one thousand dollars (\$1000.00).

**History:** En. Sec. 8, Ch. 146, L. 1909; amd. Sec. 1, Ch. 120, L. 1921; re-en. Sec. 7173, R. C. M. 1921; amd. Sec. 3, Ch. 157, L. 1923; amd. Sec. 1, Ch. 116, L. 1927; amd. Sec. 1, Ch. 15, L. 1929; amd. Sec. 1, Ch. 62, L. 1965.

#### **Amendment**

The 1965 amendment increased the daily compensation of the commissioners set forth in the first paragraph from \$5 to \$10.

**89-1215. Records required to be kept—examination by state examiner.**

#### **Cross-References**

State examiner's functions transferred, sec. 82A-903(3)(s).

## **CHAPTER 17—IRRIGATION DISTRICTS—BONDS**

Section 89-1701. Limitations on debt-incurring power.

89-1705. Details relating to bonds.

89-1708. Delivery of bonds—disposition of proceeds.

**89-1701. (7208) Limitations on debt-incurring power.** The board of commissioners or other officers of the district shall have no power to incur any debt or liability whatever, either by issuing bonds or otherwise, except as provided in this act; and any debt or liability incurred in excess of such express provisions shall be and remain absolutely void, except

that for the purpose of organization or for any of the immediate purposes of this act, or to make or purchase surveys, plans, and specifications, or for stream gauging and gathering data, or to make any repairs occasioned by any calamity or other unforeseen contingency, the board of commissioners may, in any one year, incur the indebtedness of as many dollars as there are acres in the district, and may cause warrants of the district to issue therefor.

**History:** En. Sec. 38, Ch. 146, L. 1909; amd. Sec. 1, Ch. 110, L. 1913; amd. Sec. 1, Ch. 127, L. 1913; re-en. Sec. 7208, R. C. M. 1921; amd. Sec. 32, Ch. 234, L. 1971. See also Sec. 89-1901.

#### Amendments

The 1971 amendment deleted from the end of the section "bearing interest at the rate not to exceed six per centum per annum."

**89-1705. (7212) Details relating to bonds.** (1) All bonds issued under the provisions of this act shall be payable in gold coin of the United States, of the standard weight and finances [fineness] existing at the time of the issue; and shall run for a period not longer than forty (40) years from their date, but may contain a clause providing for their prior redemption and payment, at the option of the board of commissioners of the district, on any interest payment date after five (5) years from their date. Instead of straight maturity bonds, bonds may be issued to mature serially at such times and in such amounts as the board of commissioners shall determine, but no bonds so issued shall run for a longer period than forty (40) years from the date of issue. Said bonds shall bear interest from their date until paid, payable annually or semiannually, the installments of interest to date of maturity of principal to be evidenced by appropriate coupons attached to each bond. Said bonds and interest coupons shall be payable at such place or places, within or without the state of Montana, as the board of commissioners shall prescribe.

(2) Such bonds shall be of such denomination or denominations, and in such form, as the board of commissioners shall prescribe. An issue of bonds is hereby defined to be all the bonds issued in accordance with a resolution or order of the board of commissioners. Each issue of the bonds of a district shall be numbered consecutively as authorized, and the bonds of each issue shall be numbered consecutively. The board of commissioners shall fix the date of said bonds, or may divide any issue into two (2) or more divisions and fix different dates for the bonds of each respective division. The date of any bond must be subsequent to the order or resolution authorizing it and prior to its delivery to a purchaser from the district.

(3) and (4). \* \* \* [Same as parent volume.]

**History:** En. Sec. 42, Ch. 146, L. 1909; amd. Sec. 1, Ch. 17, Ex. L. 1919; re-en. Sec. 7212, R. C. M. 1921; amd. Sec. 8, Ch. 157, L. 1923; amd. Sec. 12, Ch. 260, L. 1959; amd. Sec. 33, Ch. 234, L. 1971.

#### Amendments

The 1971 amendment deleted "at a rate not to exceed six per centum per annum" after "until paid" in the third sentence of subsection (1); and made minor changes in style.

#### Compiler's Notes

The compiler has inserted the bracketed word "fineness." This was the term used prior to 1971 amendment.

**89-1708. (7215) Delivery of bonds—disposition of proceeds.** In the event that bonds are sold for cash, they shall be delivered by the board of commissioners to the county treasurer of the county wherein the office of the district is located, who shall deliver them to the purchaser upon receipt of the purchase price therefor, and after making a complete record of the same. Delivery of the bonds sold may be made by the county treasurer to the purchaser at any place or places within or without the state of Montana, and said county treasurer may receive the proceeds of the sale of said bonds at said place or places of delivery. The county treasurer shall thereupon place the proceeds of said sale to the credit of said district; and the same shall be paid out by the county treasurer only upon the written order of the board of commissioners, signed by the president and secretary under the seal of the district. Said proceeds shall be expended for the purpose or purposes for which said bonds were issued, and for no other. Provided, in case any portion of the funds realized from the sale of bonds are not needed immediately for the purpose for which said bonds were issued, the board of commissioners whenever, in its judgment, the same may be to the best interests of the district, shall have the power and authority to direct the investment of such funds, and any other surplus funds of the district, or any portion thereof, in interest-bearing securities of the United States, or of the state of Montana, or in interest-bearing certificates of deposit of national or state banks approved by the state superintendent of banks; provided, however, that in the event of such deposit said banks shall first furnish an indemnity bond to be approved by said board of commissioners and the state superintendent of banks. The county treasurer shall transfer to the credit of the district, and place to the credit of such fund or funds as the board of commissioners may direct, all interest received upon money or securities of the district entrusted to his care.

**History:** En. Sec. 45, Ch. 146, L. 1909; re-en. Sec. 7215, R. C. M. 1921; amd. Sec. 10, Ch. 157, L. 1923; amd. Sec. 1, Ch. 258, L. 1967.

#### **Amendments**

The 1967 amendment inserted "and any other surplus funds of the district" after "investment of such fund" in the fifth sentence.

## **CHAPTER 18—IRRIGATION DISTRICTS—TAXES AND ASSESSMENTS**

Section 89-1801. Tax or assessment to pay bonds and interest.

89-1811. County treasurer as custodian of district funds.

### **89-1801. (7232) Tax or assessment to pay bonds and interest. (1).**

\* \* \* [Same as parent volume.]

(2) It shall be the duty of the board of commissioners of the district, in the order or resolution authorizing and directing the issuance of bonds of the district, mentioned in section 89-1703, to provide for the annual levy and collection of a special tax or assessment upon all the lands included in the district and subject to taxation and assessment as aforesaid, sufficient in amount to meet the interest on said bonds promptly when and as the same accrues, and to discharge the principal thereof at their maturity, or respective maturities, and to meet all payments due or to



become due to the United States under any contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States as in section 89-1301 provided, at the times such payments by such contract become due and payable. Where straight maturity bonds are issued, it shall be the duty of the board of commissioners of the district to create and maintain a sinking fund sufficient to pay and discharge said bonds at maturity. If said bonds shall be issued for twenty (20) years or less, there shall be annually levied for such sinking fund a special tax or assessment, as aforesaid, sufficient to produce a net amount represented by the quotient found by dividing the aggregate amount of the principal of the bonds by the number of years the bonds have to run; but if said bonds are issued for more than twenty (20) years, then it shall not be necessary to levy a special tax or assessment for sinking fund until the twentieth year prior to the maturity of the bonds, at which time and each year thereafter there shall be levied and collected a special tax or assessment sufficient to produce a net sum equal to one-twentieth ( $1/20$ ) part of the aggregate amount of the principal of the bonds.

(3). \* \* \* [Same as parent volume.]

(4) In the event that for any reason any special tax or assessment hereinabove provided for cannot or shall not be levied and collected in time to meet any interest falling due on any bonds issued hereunder, then the board of commissioners shall have the power and authority, and it shall be their duty, to provide for and pay such interest when due, either out of any of the funds in hand in the treasury of the district not otherwise appropriated, or by warrants drawn against the next district tax or assessment levied or to be levied. Said warrants shall be in addition to those mentioned in section 89-1701.

(5). \* \* \* [Same as parent volume.]

**History:** En. Sec. 46, Ch. 146, L. 1909; amd. Sec. 14, Ch. 145, L. 1915; re-en. Sec. 7232, R. C. M. 1921; amd. Sec. 34, Ch. 234, L. 1971.

may bear interest at a rate not to exceed six per centum per annum)" after "or by warrants" near the end of the first sentence of subsection (4); and made minor changes in style.

#### Amendments

The 1971 amendment deleted "(which

**89-1811. (7239) County treasurer as custodian of district funds.** The county treasurer of the county wherein the office of an irrigation district is located shall be the custodian of all funds belonging to the district, and he shall pay out such funds upon the order of the board of commissioners, except as to payments on bonds and interest, for which no order shall be necessary. Where any portion of the funds belonging to a district have been collected for the purpose of establishing a reserve fund, the county treasurer shall pay such portion to the district on order of the district's board of commissioners, who shall have authority to invest the same in state or federal bonds or in savings certificates of institutions insured by the federal deposit insurance corporation. Where moneys of a district in the United States contract fund established pursuant to section 89-1809 are in excess of those needed to pay a district's next suc-

ceeding annual contract obligation or obligations to the United States, such excess, or any part thereof, may, upon order of the district's board of commissioners, and with the consent of the United States officer administering the contract for which the contract fund has been established, be paid to the district for use in meeting other obligations of the district. Such orders of the board of commissioners shall be signed by the president and secretary of the board, and shall bear the official seal of the district.

**History:** En. Sec. 53, Ch. 146, L. 1909; amd. Sec. 18, Ch. 145, L. 1915; re-en. Sec. 7239, R. C. M. 1921; amd. Sec. 1, Ch. 137, L. 1971.

#### **Amendments**

The 1971 amendment divided the former first sentence into the present first and fourth sentences; deleted "and payments under any contract between the district and the United States, accompanying which bonds of the district have

not been deposited with the United States, as in section 89-1301 provided" before "for which no order shall be necessary" at the end of the first sentence; inserted new second and third sentences; deleted a final sentence reading "Where such orders are for the payment of money for construction work, the same shall be accompanied by and attached to the written estimate of the engineer in charge of such construction work"; and made minor changes in phraseology.

### **89-1832. (7250) Sale or transfer of lands.**

#### **Highway Condemnation**

State highway commission acquiring land for highway purposes is not liable for assessment and taxes by irrigation district since land taken will no longer benefit from services provided by district,

notwithstanding contention of district that takings so reduced total irrigable acreage of district as to increase per-acre cost of operation and maintenance of remainder. *Helena Valley Irrig. Dist. v. State Highway Commission*, 150 M 192, 433 P 2d 791.

## **CHAPTER 21—IRRIGATION DISTRICTS—APPEALS— MISCELLANEOUS PROVISIONS**

Section 89-2107. Records—inspection—fees—reports.

**89-2107. (7260) Records—inspection—fees—reports.** (1) and (2).  
\* \* \* [Same as parent volume.]

(3) It shall be the duty of the board of commissioners to file with the county clerk and recorder of the county in which the district is located, annually, within ten (10) days from and after March 1 of each year, a sworn report showing the assets and liabilities of the district, the amount of money received during the preceding year, and the amount expended during said time, and shall cause said report to be published at least once in the official newspaper of such county.

(4) It shall be the duty of the state examiner or his representative to notify the secretaries of such districts of the time of presenting the books and records at the courthouse for examination.

(5) The costs incurred by the state examiner and his assistants in conducting the examinations of irrigation districts shall be reimbursed to the state at the rate of seventy dollars (\$70) per day for each person engaged in an examination, and the moneys shall be paid at the conclusion of the examination to the state treasurer who shall credit such payment to the general fund of the state.

**History:** En. Sec. 65, Ch. 146, L. 1909; amd. Sec. 21, Ch. 145, L. 1915; amd. Sec. 1, Ch. 212, L. 1921; re-en. Sec. 7260, R. C. M. 1921; amd. Sec. 2, Ch. 195, L. 1945; amd. Sec. 4, Ch. 256, L. 1971.

#### Amendments

The 1971 amendment added subsections (4) and (5) and made a minor change in style.

#### Cross-References

State examiner's functions transferred, sec. 82A-903(3)(s).

### CHAPTER 23—DRAINAGE DISTRICTS—COMMISSIONERS— ELECTION—ORGANIZATION—REPORTS

Section 89-2348. Assessments for construction—annual installment.

#### 89-2330. (7307) Report as to assessments.

##### Highway Commission Property

Flood control district could assess property and improvements within district's exterior boundaries, which were owned

or under lease by state highway commission. State Highway Commission v. West Great Falls Flood Control & Drainage District, — M —, 468 P 2d 753.

89-2348. (7325) Assessments for construction—annual installment. At the time of the confirmation of such assessments, it shall be competent for the court to order the assessment for construction of new work, to be paid in not more than fifteen (15) annual installments, of such amounts and at such times as will be convenient for the accomplishment of the proposed work, or for the payment of the principal and interest of such notes or bonds of said district, as the court shall grant authority to issue, for the construction of new work. The court shall also, by such order, fix a date on which the first installment of the assessments for construction shall become due, not more than five (5) years after the date of the order, and each of said installments shall draw interest at the rate fixed by the court in accordance with law from the date of said order.

**History:** En. Sec. 61, Ch. 129, L. 1921; re-en. Sec. 7325, R. C. M. 1921; amd. Sec. 35, Ch. 234, L. 1971.

#### Amendments

The 1971 amendment substituted "fixed by the court in accordance with law" for "of seven per cent per annum" near the end of the section; and made a minor change in style.

#### 89-2349. (7326) Lien of assessments—payments of assessments, etc.

##### Highway Commission Property

Flood control district could assess property and improvements within exterior boundaries of district, which were owned

or under lease by state highway commission. State Highway Commission v. West Great Falls Flood Control & Drainage District, — M —, 468 P 2d 753.

### CHAPTER 25—DRAINAGE DISTRICTS—BONDS— REFUNDING INDEBTEDNESS

Section 89-2501. Borrowing money—procedure to issue notes or bonds.  
89-2502. Refunding indebtedness of district.

89-2501. (7343) Borrowing money — procedure to issue notes or bonds. (1) The commissioners may borrow money not exceeding the amount of assessment for the cost of construction and additional assessments, as provided in section 89-2350, unpaid at the time of borrowing,



for the construction or repair of any work which they shall be authorized to construct or repair, or for the payment of any indebtedness which they may have lawfully incurred, and may issue notes or negotiable coupon bonds on the district, bearing interest, payable semiannually and not running beyond one (1) year after the payment of the last installment of the assessment, on account of which money is borrowed, shall fall due.

(2) Before the issuance of said notes or bonds, the commissioners shall pass a resolution providing for the issuance of such notes or bonds, which said resolution shall fix the rate of interest which said notes or bonds shall bear, the time of payment and, if redeemable before maturity, the date thereof, and shall prescribe the denominations, not exceeding one thousand dollars (\$1,000), and form thereof, and may provide that both the principal and interest of said notes and bonds shall be payable at some convenient banking house, or trust company's office, to be named in said notes or bonds; such notes or bonds, and the coupons attached thereto, shall bear the signatures of the president and the secretary of the drainage district; and the corporate seal of the drainage district shall be affixed to each of the notes or bonds.

(3) Upon execution, the notes or bonds shall be deposited with the county treasurer, who shall register the same in a book for that purpose, which shall show the number and amount of each note or bond, its date, the date payable and redeemable, where payable, the person to whom issued, and upon sale of the said notes or bonds, the county treasurer shall deliver the same to the person or persons to whom sold, upon their making payment for the same; said notes or bonds may be sold by the commissioners at either public or private sale, either with or without advertisement as they may deem it to the best interests of the district; said notes or bonds shall not be sold at less than ninety per cent (90%) of their face value; said notes or bonds shall not be held to make the commissioners personally liable, but shall constitute a lien upon the assessments for the repayment of the principal and interest of such notes or bonds.

(4). \* \* \* [Same as parent volume.]

**History:** En. Sec. 79, Ch. 129, L. 1921; re-en. Sec. 7343, R. C. M. 1921; amd. Sec. 13, Ch. 260, L. 1959; amd. Sec. 36, Ch. 234, L. 1971.

#### **Amendments**

The 1971 amendment, deleted "at a rate not to exceed six per centum per annum"

after "bearing interest" in the latter part of subsection (1); deleted "not exceeding six per centum per annum, payable semiannually" after "interest which said notes or bonds shall bear" near the beginning of subsection (2); and made minor changes in style.

**89-2502. (7344) Refunding indebtedness of district.** And the court may, on the petition of the commissioners, authorize them to refund any lawful indebtedness of the district by taking up and canceling all of its outstanding notes and bonds, as fast as they become due, or before, if the holders thereof will surrender the same, and issuing in lieu thereof new notes or bonds of such district, payable in such longer time as the court shall deem proper, not to exceed in the aggregate the amount of all notes and bonds of the district then outstanding, and the unpaid accrued interest thereon.

History: En. Sec. 80, Ch. 129, L. 1921;  
re-en. Sec. 7344, R. C. M. 1921; amd. Sec.  
42, Ch. 234, L. 1971.

**Amendments**

The 1971 amendment deleted from the end of the section "and bearing interest not exceeding six per cent per annum."

## CHAPTER 29—APPROPRIATION AND REGULATION OF GROUND WATER

Section 89-2911. Definitions.  
89-2913. Filing—notice of appropriation—notice of completion.

**89-2911. Definitions.** As used in this act or regulations issued hereunder:

(a) "Ground water" means any fresh water under the surface of the land including the water under the bed of any stream, lake, reservoir, or other body of surface water. Fresh water shall be deemed to be water fit for domestic, livestock or agricultural use. The administrator, after notice and hearing, is authorized to fix definite standards for determining fresh water in any controlled ground water or subarea of the state.

(b) to (e). \* \* \* [Same as parent volume.]

(f) "Administrator" means the Montana water resources board.

(g). \* \* \* [Same as parent volume.]

(h) "Notice of appropriation" means an optional form on which the appropriator notifies the administrator and files for record the intention to appropriate ground water. This form filed alone does not give the appropriator the right to use ground water. It must be followed by a notice of completion to establish a right.

(i) "Notice of completion" means a form on which the appropriator notifies the administrator and files for record the completion of a well (notice of completion of ground water appropriation by means of well) or the completion of a development to withdraw ground water without a well as by subirrigation and other natural processes (notice of completion of ground water appropriation without a well).

(j) "Declaration of vested ground water rights" means a form which was provided, for a period of four (4) years after January 1, 1962, for filing vested ground water rights. This form expired on January 1, 1966.

History: En. Sec. 1, Ch. 237, L. 1961;  
amd. Sec. 16, Ch. 280, L. 1965; amd. Sec.  
1, Ch. 307, L. 1971.

**Amendments**

The 1965 amendment substituted "state water conservation board" for "state engineer" in paragraph (f).

The 1971 amendment substituted "Montana water resources board" for "state water conservation board" in subdivision (f); added subdivisions (h), (i), and (j); and made minor changes in punctuation and phraseology.

**89-2913. Filing—notice of appropriation—notice of completion.** (a) to (g). \* \* \* [Same as parent volume.]

(h) Persons who had put ground water to a beneficial use, including subirrigation or other natural process, prior to January 1, 1962 had a four (4) year period after January 1, 1962 to file a "declaration of vested

ground water rights" in the office of the county clerk of the county in which the claimed right was situated. The right to file a "declaration of vested ground water rights" expired on January 1, 1966; therefore, any person desiring to file on ground water put to beneficial use prior to January 1, 1962, but not filed on by December 31, 1965 may file a "notice of completion." The appropriators right will commence on the date the notice is filed, except as hereinafter provided.

The county clerk shall transmit copies to the office of the administrator and the bureau of mines and geology. The administrator shall attend to filing copies in any other counties affected by the appropriation.

The "declaration of vested ground water rights" as provided for, to be filed on from January 1, 1962 to January 1, 1966 shall be taken and received in all courts of this state as prima facie evidence of the statements therein contained.

Failure to comply with this requirement shall in no wise work a forfeiture of such rights, or prevent any such claimant from establishing such rights in the courts, but he must maintain the burden of proving such unrecorded rights. Provided, however, that persons who have filed the water well log form, provided for in sections 1 and 2 of chapter 58, session laws of Montana, 1957, shall be deemed to have complied with the requirements of this section. These latter forms may be returned to the county clerks by the administrator for the purpose of correction or for the entry of material facts necessary to fully complete the filing.

**History:** En. Sec. 3, Ch. 237, L. 1961; amd. Sec. 1, Ch. 21, L. 1965; amd. Sec. 2, Ch. 307, L. 1971.

The 1971 amendment rewrote the first paragraph of subsection (h); inserted "to be filed on from January 1, 1962 to January 1, 1966" in the third paragraph of subsection (h); and made minor changes in punctuation, style and phraseology.

#### Amendments

The 1965 amendment substituted "four (4) years" for "two (2) years" in the first sentence of subsection (h).

### CHAPTER 33—COUNTY AND MUNICIPAL PARTICIPATION IN FLOOD CONTROL AND WATER CONSERVATION

- Section 89-3301. Participation in projects authorized—work which may be undertaken.
- 89-3302. Water conservation and flood control activities declared public purpose.
- 89-3303. Acquisition of property—condemnation.
- 89-3304. Acceptance of aid—assumption of remaining cost.
- 89-3305. Right of way and construction costs.
- 89-3306. Direction of project.
- 89-3307. Contributions to right of way costs—agreement to maintain works.
- 89-3308. Street or road fund used.
- 89-3309. Levy of special assessment—apportionment to property benefited.
- 89-3309.1. Charges to be levied.
- 89-3310. Contracts for use of railroads and highways.
- 89-3311. Division of work into parts—separate proceedings for parts.
- 89-3312. Indebtedness and bonds—bond election—special assessment to pay indebtedness.
- 89-3313. Powers additional.
- 89-3314. Provisions to provide alternative method.

89-3301. Participation in projects authorized—work which may be undertaken. Cities, towns or counties, through their councils, boards of



county commissioners, or other governing body, are hereby empowered, either individually or jointly, to engage or participate in the establishment of water conservation and flood control projects within the limits of such city, town or county for the protection or reclamation of property situated therein from floods or high waters and to protect property therein from the effects of flood water, and for the conservation, development, storage, distribution, drainage and utilization of water for purposes beneficial to the district, such purposes to include but not be limited to industrial and municipal water supply, recreation and wildlife, irrigation, streamflow stabilization, household and domestic use and pollution abatement, whenever the establishment of such a water conservation and flood control system shall, in the judgment of the city council, board of county commissioners or other governing body, be conducive to public convenience and welfare. Such cities, towns or counties may in accordance with the provisions of this act individually, jointly or severally, or in co-operation with the federal or state government or any department or agency thereof, and with each other, deepen, widen, straighten, alter, change, divert or otherwise improve the watercourses within or without their limits, by constructing levees, dikes, embankments, structures, impounding reservoirs or conduits, and improve, widen and establish streets, alleys and boulevards across and adjacent to the abandoned or new channel or conduit and provide for the payment of the cost and maintenance of such project or projects under the terms of this act. The boundaries of a project once established shall not be extended without the vote of a majority of the electors residing in the area proposed to be annexed. Such electors to be determined and such election to be held in accordance with the provisions of section 89-3312 of this act.

**History:** En. Sec. 1, Ch. 272, L. 1965; am. Sec. 1, Ch. 284, L. 1967.

#### **Title of Act**

An act authorizing cities, towns or counties to participate in flood control or flood prevention projects, to acquire property for such purpose, to accept federal aid for such purpose, providing for division of expenses in connection with such purpose, providing for assessments, permitting the cities, towns or counties to enter into certain contracts in pursuance of such purpose, authorizing the issuance of general obligation bonds for such purpose upon an election thereon, authorizing the state water conservation board to co-ordinate such activities when two or more counties are involved and for that purpose appropriating to the state water conservation board the sum of one dollar

(\$1) from the general fund of the state of Montana for the biennium commencing July 1, 1965, containing a repealing clause and containing a savings clause.

#### **Amendments**

The 1967 amendment substituted "water conservation and flood control projects" for "a flood control or flood prevention project" after "establishment of" in the first sentence, inserted "and for the conservation, development, \* \* \* pollution abatement" before "whenever" and inserted "water conservation and" after "such a"; inserted "or state" after "federal" in the second sentence, substituted "such project or projects" for "such flood control project" before "under the terms" near the end of the second sentence and added the last sentence.

**89-3302. Water conservation and flood control activities declared public purpose.** Such water conservation and flood control activities, their establishment, construction, operation and maintenance as authorized by this act are declared to be for the protection of the tax base of the city, town or county, for the protection of public roads, lands and improve-

ments, and for the protection of the public health, sanitation, safety and for improvement of the general welfare.

History: En. Sec. 2, Ch. 272, L. 1965;  
amd. Sec. 2, Ch. 284, L. 1967.

#### Amendments

The 1967 amendment inserted "water

conservation and" after "Such" at the beginning of the section and inserted "for improvement of the" before "general welfare" at the end of the section.

**89-3303. Acquisition of property—condemnation.** Cities, towns and counties may acquire by gift, purchase or condemn and appropriate private property within the limits of the project, including the right to cross railroad right of way and property and highway right of way and property, so as not to impair the previous public use, as may be necessary to carry into effect the provisions of this act, and to provide an outlet for the watercourses, either natural or artificial, which may be deepened, widened, straightened, altered, changed, diverted or otherwise improved under the provisions of this act. All provisions of the laws of the state of Montana relating to the condemnation of lands for public purposes shall apply to the provisions thereof in and so far as applicable.

History: En. Sec. 3, Ch. 272, L. 1965;  
amd. Sec. 3, Ch. 284, L. 1967.

#### Amendments

The 1967 amendment deleted "flood control" before "project."

**89-3304. Acceptance of aid—assumption of remaining cost.** Cities, towns and counties may in accordance with the provisions of this act accept funds and property or other assistance, financial or otherwise, from federal, state and other public or private sources for the purpose of aiding the construction and maintenance of water conservation and flood control projects; and co-operate and contract with the state or federal government, or any department or agency thereof, in furnishing assurances and meeting local co-operation requirements of any project involving control, conservation and use of water.

History: En. Sec. 4, Ch. 272, L. 1965;  
amd. Sec. 4, Ch. 284, L. 1967.

#### Amendments

The 1967 amendment substituted "funds and property or other assistance \* \* \* and

use of water" for "federal aid in the doing of the acts provided in sections 1 and 3 hereof, and may assume such portion of the cost thereof not discharged by such federal aid" after "this act accept."

**89-3305. Right of way and construction costs.** The cost of all right of way acquired by purchase or condemnation may be borne by the city, town or county together with any other property rights which may be required in furtherance of such projects, and the work of actual construction and the cost thereof may be borne by the federal government.

History: En. Sec. 5, Ch. 272, L. 1965.

**89-3306. Direction of project.** This act contemplates that the actual direction of the project and the doing of the work in connection therewith is assumed by either the state or the federal government and the city, town or county provides and assumes the cost of necessary right of way over and above such contributions in that regard as the federal

government may choose to make. Under such limitation all appropriate portions of this act shall apply.

History: En. Sec. 6, Ch. 272, L. 1965;  
amd. Sec. 5, Ch. 284, L. 1967.

#### Amendments

The 1967 amendment inserted "either the state or" after "assumed by."

**89-3307. Contributions to right of way costs—agreement to maintain works.** Cities, towns and counties in furtherance of such water conservation and flood control projects may accept contributions to enable them to pay for necessary right of way. They may also enter into agreement with the federal government to maintain levees, dikes, or other construction and to do all other acts required by the federal government in maintaining the work when completed.

History: En. Sec. 7, Ch. 272, L. 1965;  
amd. Sec. 6, Ch. 284, L. 1967.

#### Amendments

The 1967 amendment inserted "water conservation and" before "flood control."

**89-3308. Street or road fund used.** The council, board or governing body shall have power to allocate a portion of the street or road fund, as the case may be, for the purpose of acquiring right of way or the operation and maintenance of completed projects.

History: En. Sec. 8, Ch. 272, L. 1965;  
amd. Sec. 7, Ch. 284, L. 1967.

#### Amendments

The 1967 amendment inserted "operation and" before "maintenance"; and deleted "flood control" before "projects."

**89-3309. Levy of special assessment—apportionment to property benefited.** Any city, town or county that shall establish a water conservation or flood control system or both pursuant to this act may for the purpose of providing funds for the operation and maintenance thereof levy an annual special assessment against all real property in the area benefiting from such system. Such special assessment shall be levied against each lot or parcel of land in the benefited area for that portion of the money required which its area bears to the total area of all of the lands to be assessed; or said assessment may, at the option of the governing body of the city, town or county, as the case may be, be based upon the taxable valuation, as stated in the last completed county assessment roll, of the lots or parcels of land exclusive of improvements thereon, within said benefited area, in which case each lot or parcel of land to be assessed shall be assessed with that part of the amount of money required which its taxable valuation bears to the total taxable valuation of all of the lands to be assessed. Provided, however, that where the benefited area lies in more than one county or lies both within a county and also a city or town, the same method of assessment shall be used for each governing body. Such special assessments for the operation and maintenance of any system authorized by this act shall be levied as are other special improvement levies as required by law.

History: En. Sec. 9, Ch. 272, L. 1965;  
amd. Sec. 8, Ch. 284, L. 1967.

sentences for former second sentence which read; "Such special assessment shall be apportioned among the several lots or parcels of real property in the benefited area in proportion to the benefit conferred"; and, in the last sentence deleted "flood control" before "system."

#### Amendments

The 1967 amendment inserted "water conservation or" before "flood control"; inserted "or both" before "pursuant"; substituted the present second and third



**89-3309.1. Charges to be levied.** Cities, towns and counties may for the purpose of providing funds for the operation and maintenance of completed projects, fix, maintain and collect fees, rents, tolls and other charges for services rendered or facilities provided. In fixing such rate, fee, toll or rent the governing body shall charge for water furnished for household use, domestic use, irrigation use, industrial use, municipal use and for water used for streamflow stabilization a fee sufficient to pay the proportionate share of the repairs, maintenance and operating expenses as such use bears in economic value, such economic value to be determined by the governing body, to the total economic value of the total use of said facilities of the project or projects. For the benefits received by areas within the boundaries of the project or projects for flood prevention, flood control and pollution abatement, the governing body shall determine a reasonable valuation or charge, which valuation or charge shall be certified by them to the county commissioners prior to the time general taxes are levied and assessed and it shall be the obligation of the county commissioners to levy a special assessment as provided for in section 89-3309 against such area or areas sufficient to provide revenues for the repairs, maintenance and operating expenses of the project. For recreation use the governing body shall first determine the share of the costs of operation, repairs and depreciation to be charged against such uses, and from this figure shall subtract the estimated amount of fees and tolls collected for such uses; the deficiency, if any, shall be certified to the county commissioners in the same way as the charges for flood prevention, flood control, etc. and special assessments be levied by the county commissioners in the manner set out herein. The council, board of county commissioners or other governing body shall also have the authority to receive and accept appropriations and contributions from any source of either money or property or other things of value, to be held, used, and applied for the purposes in this act provided.

**History:** En. Sec. 9, Ch. 284, L. 1967.

**Title of Act**

An act amending sections 89-3301, 89-3302, 89-3303, 89-3304, 89-3306, 89-3307, 89-3308, 89-3309, 89-3310, 89-3311, R. C. M. 1947, relating to city and county flood control projects, to authorize multiple use

water projects by cities and counties; to change the method of levying the special assessment to pay for such projects; authorizing cities and counties to charge fees for services and facilities provided by such projects; and providing an effective date.

**89-3310. Contracts for use of railroads and highways.** Any city, town or county may contract with any railroad company or with the state highway commission for the use of railroad or highway rights of way and embankments, and other railroad or highway property which can be utilized by such city, town or county for the purpose of water conservation or flood control or protection as part of its water conservation or flood control system, or both, for any period not exceeding ninety-nine (99) years,

**History:** En. Sec. 10, Ch. 272, L. 1965; amd. Sec. 10, Ch. 284, L. 1967.

conservation or" before "flood control" wherever found in this section; inserted "or both" before "for any period."

**Amendments**

The 1967 amendment inserted "water

**89-3311. Division of work into parts—separate proceedings for parts.** Whenever any city, town or county has begun a water conservation or flood control system, or both, under this act, the council, board or other governing body shall have the power to divide the work into parts, sections or districts; to omit parts of said work and to contract for any part or section separately and proceed therewith the same as if the entire work or improvements were contracted for, done or made.

**History:** En. Sec. 11, Ch. 272, L. 1965; conservation or" before "flood control"; amd. Sec. 11, Ch. 284, L. 1967. and inserted "or both" before "under this act."

#### Amendments

The 1967 amendment inserted "water

**89-3312. Indebtedness and bonds—bond election—special assessment to pay indebtedness.** Cities, towns and counties are hereby authorized to contract indebtedness and to issue special improvement district or rural improvement district bonds to provide funds for the payment of the cost of improvements contemplated by this act by following the following procedures:

The governing body of the city, town or county may call a special election to vote upon the proposition of issuing said bonds or may submit the proposition as a special question at a regular municipal or general election. The notice of the election and the election itself shall be carried out in accordance with sections 11-2201 through 11-2288, R. C. M. 1947, as amended, as to cities, and in accordance with sections 16-1601 through 16-1638, R. C. M. 1947, as amended, as to the counties.

Tax assessments for the payment of said bonds shall be levied in accordance with sections 11-2201 through 11-2288 and sections 16-1601 through 16-1638, R. C. M. 1947, as amended, as to cities and counties, respectively.

**History:** En. Sec. 12, Ch. 272, L. 1965; amd. Sec. 1, Ch. 239, L. 1971.

#### Amendments

The 1971 amendment substituted "special improvement district or rural improvement district bonds" for "general obligation bonds" in the first paragraph; substituted "sections 11-2201 through 11-2288" for "11-2301 through 11-2330" in the second paragraph; substituted "sections 16-1601 through 16-1638" for "16-2002 through 16-2050" in the second paragraph; substituted "Tax assessments" for "Taxes" at the beginning of the third

paragraph; substituted "sections 11-2201 through 11-2288 and sections 16-1601 through 16-1638" for "11-2301 through 11-2330 and sections 16-2002 through 16-2050" in the third paragraph; deleted the former second sentence of the third paragraph reading, "The indebtedness incurred for the purposes herein provided shall not be considered an indebtedness for general or ordinary purposes and shall not be charged against or counted as part of the levies available for general or ordinary purposes"; and made minor changes in style.

**89-3313. Powers additional.** This act, and each section thereof, shall be construed as granting additional power without limiting the power already existing in cities, towns and counties.

**History:** En. Sec. 13, Ch. 272, L. 1965.

#### Appropriation

Section 14 of Ch. 272, Laws 1965, appropriated \$1.00 to the water conservation board from the general fund for the biennium commencing July 1, 1965.

#### Separability Clause

Section 15 of Ch. 272, Laws 1965 read "If a part of this act shall be declared to be invalid, all valid parts that are severable from the invalid parts remain in effect. If a part of this act is declared to be invalid in one or more of its applica-

tions, the part remains in effect in all valid applications that are severable from the invalid applications."

#### Repealing Clause

Section 16 of Ch. 272, Laws 1965 repealed all acts and parts of acts in conflict therewith.

**89-3314. Provisions to provide alternative method.** The provisions of this chapter and the methods of organization of water conservation and flood control projects are hereby declared to be an alternative method to any other method proposed by any law now in existence or hereafter enacted for the creation of such projects and it is hereby declared that no provision hereof shall be amended or repealed by implication or otherwise as being in conflict with any existing law or future enactment unless specifically so declared by the legislature.

**History:** En. Sec. 12, Ch. 284, L. 1967.

vided the act should be in effect from and after its passage and approval. Approved March 2, 1967.

#### Effective Date

Section 13 of Ch. 284, Laws 1967 pro-

### CHAPTER 34—CONSERVANCY DISTRICTS

- Section 89-3401. Organization of conservancy districts and construction of works a public use—benefits.
- 89-3402. Purpose of act.
- 89-3403. Definitions.
- 89-3404. Preliminary survey—written request.
- 89-3405. Action by water board upon receipt of request.
- 89-3406. Hearing by water board.
- 89-3407. Feasibility study and report—adjustment of proposed boundaries.
- 89-3408. Procedure for organization of district.
- 89-3409. Court hearing on organization petition—election—voters needed to organize—no jurisdiction to determine priority of appropriation.
- 89-3410. Filing of documents after organization.
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- 89-3413. Selection of officers—bylaws and rules—minutes—regular and special meetings.
- 89-3414. Powers of directors.
- 89-3415. Participation in federal programs.
- 89-3416. Assessments.
- 89-3417. Notice of public budget hearing.
- 89-3418. Directors to inform county assessor and treasurer annually concerning budget, special assessments and realty—multi-county districts.
- 89-3419. Collection of special assessments—multi-county districts—investment of surplus funds—interest.
- 89-3420. Condemnation authorized—water rights.
- 89-3421. Annual written report of directors' activities.
- 89-3422. State examiner to examine financial records—report—fee.
- 89-3423. Persons entitled to vote.
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- 89-3425. Challenging voters—oath—penalty for false subscription.
- 89-3426. Issuance of bonds—maximum term—sale as single issue of multi-purpose bonds.
- 89-3427. Determination of amount of bonds to be issued.
- 89-3428. Resolution for issuance of bonds—notice—election.
- 89-3429. Approval of bond issue at election—authorizes assessments—recording of election results—validity of election—single proposition.
- 89-3430. Resolution providing for form, execution and issuance of bonds—bids—private sale—sale price—rejection of bids.



- 89-3431. Comparable to municipal bonds—exempt from taxation.
- 89-3432. Interim receipts—negotiability.
- 89-3433. Registration of bonds—copy to be furnished county treasurer.
- 89-3434. Deposit of sales proceeds—disposition—investment.
- 89-3435. Refunding bonds authorized—redemption.
- 89-3436. Fund for retirement of bonds—investment and disbursement.
- 89-3437. Revolving funds—purpose—excess money—funds deposited with county treasurer.
- 89-3438. Petition for merger of districts—hearing and notice—merger into new district—inclusion in another district—majority of electors may kill merger by petition—existing obligations.
- 89-3439. Procedure for annexing realty.
- 89-3440. Pre-annexation bonds not lien without prior agreement.
- 89-3441. Exclusion of territory from district—procedure.
- 89-3442. Procedure for dissolution of district.
- 89-3443. Dissolution election—majority approval required.
- 89-3444. Submission of termination plan—termination by directors or receiver—court order—retention of jurisdiction.
- 89-3445. Appointment of receiver—directors' authority ceases—assessments by receiver—annual assessments—disposition of assessments.
- 89-3446. Entry of dissolution order—certified copy.
- 89-3447. County general funds to receive funds remaining after dissolution—proportion.
- 89-3448. No power to generate, distribute or sell electric energy.
- 89-3449. Other agencies not affected.

**89-3401. Organization of conservancy districts and construction of works a public use—benefits.** To provide for the conservation and development of the water and land resources of the state of Montana, conserve Montana's water for utilization for beneficial purposes within the state, and provide for the greatest beneficial use of water within this state, the organization of conservancy districts and the construction of works as defined by the act are a public use and will:

(1) be essentially for the public benefit and advantage of the people of Montana;

(2) benefit all industries of the state;

(3) encourage economic growth;

(4) indirectly benefit the state by increasing property valuations;

(5) directly benefit municipalities by providing adequate supplies of water for domestic uses;

(6) directly benefit lands irrigated or drained by works constructed;

(7) directly benefit lands now irrigated by stabilizing the flow of water in streams and by increasing the flow and return flow of water to those streams;

(8) enhance fish and wildlife habitat;

(9) improve recreational facilities; and

(10) promote the comfort, safety, and welfare of the people of Montana.

**History:** En. Sec. 1, Ch. 100, L. 1969.

**Title of Act**

An act providing for the conservation

and development of water and land resources of Montana through the creation of conservancy districts.

**89-3402. Purpose of act.** The purpose of this act is to enable the formation of conservancy districts, comprised of area in one or more counties to promote the following purposes:

- (1) prevent and control floods, erosion and sedimentation;
- (2) provide for regulation of stream flows and lake levels;
- (3) improve drainage and to reclaim wet or overflowed lands;
- (4) promote recreation;
- (5) develop and conserve water resources and related lands, forest, fish and wildlife resources;
- (6) further provide for the conservation, development, and utilization of land and water for beneficial uses including, but not limited to, domestic water supply, fish, industrial water supply, irrigation, livestock water supply, municipal water supply, recreation, and wildlife.

**History:** En. Sec. 2, Ch. 100, L. 1969.

**89-3403. Definitions.** As used in this act unless the context clearly indicates otherwise:

- (1) "District" means a conservancy district, which is a public corporation and a political subdivision of the state.
- (2) "Directors" means the board of directors of a conservancy district.
- (3) "Elector" means a person qualified to vote under section 23 [89-3423] of this act.
- (4) "Court" means the district court of the judicial district in which the largest portion of the taxable valuation of real property of the proposed district is located and within the county in which the largest portion of the taxable valuation of real property of the proposed district is located within the judicial district.
- (5) "Person" means a natural person; firm; partnership; co-operative; association; public or private corporation, including the state of Montana or the United States; foundation; state agency or institution; county; municipality; district or other political subdivision of the state; federal agency or bureau; or any other legal entity.
- (6) "Water board" means the state water resources board.
- (7) "Board of supervisors" means the board of supervisors of the soil and water conservation district in which the largest portion of the taxable valuation of real property of the proposed district is located.
- (8) "Works" means all property, rights, easements, franchises, and other facilities including, but not limited to, land, reservoirs, dams, canals, dikes, ditches, pumping units, mains, pipelines, waterworks systems, recreational facilities, facilities for fish and wildlife, and facilities to control and correct pollution.
- (9) "Cost of works" means the cost of construction, acquisition, improvement, extension and development of works, including financing charges, interest and professional services.

(10) "Applicants" means any persons residing within the boundaries of the proposed district making a request for a study of the feasibility of forming a conservancy district.

(11) "Notice" means publication at least once each week for three (3) consecutive weeks in a newspaper published in each county, or if no newspaper is published in a county, a newspaper of general circulation in the county, or counties, in which a district is or will be located. The last published notice shall appear not less than five (5) days prior to any hearing or election held under this act.

(12) "Owners" are the person or persons who appear as owners of record of the legal title to real property according to the county records whether such title is held beneficially or in a fiduciary capacity, except that a person holding a title for purposes of security is not an owner nor shall he affect the previous title for purposes of this act.

(13) "Taxable valuation" shall mean the valuation determined according to section 84-302, R. C. M., 1947, and does not mean assessed valuation.

**History: En. Sec. 3, Ch. 100, L. 1969.**

**89-3404. Preliminary survey—written request.** (1) To request a preliminary survey for a proposed conservancy district, the applicants shall present a written request to the water board.

(2) The request shall:

- (a) generally describe the proposed boundaries of the district;
- (b) specify the purpose or purposes of the district;
- (c) list the works contemplated.

(3) The water board may initiate a preliminary survey without any prior request.

**History: En. Sec. 4, Ch. 100, L. 1969.**

**89-3405. Action by water board upon receipt of request.** (1) Sooner than eleven (11) days after the request is received, the water board shall acknowledge the request.

(2) The water board shall itself, or through co-operating agencies, or together with co-operating agencies:

- (a) consult with the board of supervisors and all persons who may participate in the proposed project;
- (b) conduct a preliminary survey of the proposed district;
- (c) estimate costs of works, maintenance, and operation;
- (d) determine sources of financing;
- (e) reach a tentative decision on the feasibility, desirability and compatability with the state water plan of the proposed district;
- (f) adjust the boundaries of the proposed district to improve the feasibility, desirability or consistency with the state water plan;

(g) sooner than one (1) year after receipt of the request, send a report of the preliminary survey to the applicants, the board of supervisors,



fish and game commission, state soil conservation committee, state board of health, and other affected state and federal resource agencies for their comments.

**History:** En. Sec. 5, Ch. 100, L. 1969;  
amd. Sec. 1, Ch. 302, L. 1971.

**Amendments**

The 1971 amendment increased from six months to one year the time allowed by subdivision (2)(g) for the report of preliminary survey.

**89-3406. Hearing by water board.** (1) Upon receipt of the preliminary survey report the applicants, or any one of them, may request the water board to hold a hearing. The water board shall hold the hearing sooner than sixty-one (61) days after receipt of the request. Notice of the hearing shall be given in accordance with section 3, subsection (11) [89-3403 (11)] of this act.

(2) If the water board itself initiated the preliminary survey, it may hold such a hearing without being requested to do so.

**History:** En. Sec. 6, Ch. 100, L. 1969.

**89-3407. Feasibility study and report—adjustment of proposed boundaries.** After the hearing, the applicants, or any one of them, may request the water board to prepare a detailed feasibility study of the proposed district. If the water board concludes that the proposed district is feasible, desirable, and consistent with the state water plan, it shall prepare a feasibility report, and sooner than one (1) year after receipt of the request, send copies to the applicants, if any, the fish and game commission, state soil conservation committee, state board of health, and other affected state and federal water resource agencies. For good cause shown based upon the actual technical problems in completing the report, the water board may use necessary additional time to complete and distribute the report. The detailed feasibility report shall describe the proposed works and contain an estimate of the cost of the works, the means of financing, and the estimated costs of operation and maintenance. The water board may adjust the boundaries of the proposed district to improve the feasibility, desirability and consistency with the state water plan, and to exclude land which would receive no direct or indirect benefits from the proposed district.

**History:** En. Sec. 7, Ch. 100, L. 1969;  
amd. Sec. 1, Ch. 303, L. 1971.

allowed for the feasibility report by the second sentence from six months to one year.

**Amendments**

The 1971 amendment increased the time

**89-3408. Procedure for organization of district.** If in the opinion of the water board the feasibility study shows that a district is feasible and consistent with the state water plan, the procedure for organization is:

(1) the water board shall file a petition requesting organization with the court;

(2) the petition shall:

- (a) state the name of the proposed district;
  - (b) give a legal description of the boundaries of the proposed district, excluding therefrom lands which would receive no direct or indirect benefits from the proposed district;
  - (c) describe the purposes of the district;
  - (d) describe the works;
  - (e) indicate the estimated cost of works, means of financing, and estimated costs of operation and maintenance;
  - (f) list the taxable valuation of real property in the proposed district, which must be one hundred thousand dollars (\$100,000) or more;
  - (g) describe the means of repaying capital costs;
  - (h) propose the persons who should be represented and the number of directors.
- (3) The petition shall be signed by owners of at least fifty-one per cent (51%) of the land outside the limits of an incorporated municipality, and not fewer than five per cent (5%) or one hundred (100), whichever is the lesser, of the persons who would qualify as electors within an incorporated municipality.

History: En. Sec. 8, Ch. 100, L. 1969.

**89-3409. Court hearing on organization petition — election — voters needed to organize—no jurisdiction to determine priority of appropriation.** (1) Upon receipt of a petition for organizing a district, the court shall give notice and hold a hearing on the petition. If the courts shall find that the prayer of the petition should be granted, it shall:

- (a) make and file findings of fact specifying those lands that will be directly or indirectly benefited by the proposed district, and exclude those lands which will not be so benefited;
- (b) make an order fixing the time and place of an organizing election;
- (c) give notice of an election in the way provided in section 3, subsection (11) [89-3403 (11)];
- (d) provide for election judges and fix their compensation;
- (e) fix the polling place or places as necessary;
- (f) order the county clerk to provide pollbooks, ballots, poll lists and other necessary election supplies;
- (g) provide for canvassing the results;
- (h) declare the results;
- (i) order and decree the district organized if the requisite number of eligible electors vote in favor of organization.

(2) In order for the district to be organized, fifty-one per cent (51%) or more of the eligible electors must vote in the election, and a majority of those voting must vote in favor of organization.

(3) This act shall not confer upon the court jurisdiction to hear, adjudicate, and settle questions concerning the priority of appropria-

tion of water between districts and other persons. Jurisdiction to hear and determine priority of appropriation, and questions of right growing out of, or in any way connected with a priority of appropriation, are expressly excluded from this act and shall be determined as otherwise provided by the laws of Montana.

History: En. Sec. 9, Ch. 100, L. 1969.

**89-3410. Filing of documents after organization.** Sooner than thirty-one (31) days after the district has been decreed organized, the clerk of the court shall transmit to the secretary of state, water board, and to the county clerk and recorder in each of the counties having lands in the district, copies of the election results, the decree of the court incorporating the district, and a description of the boundaries of the district. Copies of the same documents shall be filed in the office of the secretary of state in the same manner as articles of incorporation are required to be filed under the laws governing corporations. Copies shall also be filed in the office of the county clerk and recorder of each county in which a part of the district may be. The clerk and recorder of each county where the articles are filed and the secretary of state shall collect filing fees as provided by law.

History: En. Sec. 10, Ch. 100, L. 1969.

**89-3411. Reimbursement for expenses of organizing election.** If organized, the district shall reimburse the county, or counties, for the expenses incurred in the organizing election.

History: En. Sec. 11, Ch. 100, L. 1969.

**89-3412. Appointment of directors—terms of office—vacancies—first annual meeting—corporate surety bond.** If a district is organized, the court shall:

(1) establish by court order the number of persons who shall comprise the directors, appoint persons who are electors within the district to membership on the board of directors, and fix their compensation. The number shall not be less than three (3) nor more than eleven (11) persons. In fixing the number and making the appointments the court shall consider the interests and purposes to be served by the district. Upon a verified petition filed by a majority of the directors and for good cause shown, the court may enlarge or reduce the membership of the directors, but not to exceed eleven (11) nor to be less than three (3);

(2) fix the terms of office so that approximately one-third ( $\frac{1}{3}$ ) of the directors first appointed shall serve for one (1) year; approximately one-third ( $\frac{1}{3}$ ) shall serve two (2) years; and the remainder shall serve three (3) years. All succeeding terms shall be three (3) years. Unless excused for good cause, a director who misses three (3) consecutive regular meetings has vacated his position;

(3) fill all vacancies on the board by appointment or reappointment;



- (4) specify a date for the first annual meeting of the directors;
- (5) specify the amount and form of a corporate surety bond which each member of the directors shall furnish at the expense of the district, conditioned upon his faithful performance of his duties as a director.

History: En. Sec. 12, Ch. 100, L. 1969.

**89-3413. Selection of officers—bylaws and rules—minutes—regular and special meetings.** (1) The directors shall select from among themselves a chairman, vice-chairman, secretary, and other necessary officers. The directors shall adopt bylaws and rules for the conduct of meetings. All official acts of the directors shall be entered in a book of minutes to be kept by the secretary.

(2) The directors shall establish times for regular meetings and may hold special meetings upon the call of the chairman or any two (2) members, and (except in case of emergency) upon at least three (3) days notice of the time, place, and purpose of the meeting.

History: En. Sec. 13, Ch. 100, L. 1969.

**89-3414. Powers of directors.** On behalf of the district, the directors may:

- (1) adopt an official seal;
- (2) sue and be sued;
- (3) adopt rules to promote and encourage water recreation, including requirements concerning public access areas and facilities, and rules respecting the use of reservoirs and waters, picnic sites, and other recreational areas operated by the district. Rules adopted shall be filed with the secretary of directors and shall be available to any interested party upon reasonable request;
- (4) enter private property for the purposes of making surveys, provided that just compensation for actual damages is made;
- (5) provide for reimbursing of its members for actual expenses;
- (6) appropriate water and initiate or participate in the adjudication of streams;
- (7) acquire, undertake, construct, develop, improve, maintain, and operate works and all incidental facilities;
- (8) acquire by purchase, exchange, gift, lease, grant, devise, or otherwise, lands, water, water rights, or rights of way as necessary for the execution of any authorized function of the district. Title to all property (including water rights) shall be in the name of the district;
- (9) merge with other special districts as hereinafter provided;
- (10) hold and dispose of property as necessary or convenient in the performance of the functions of the district;
- (11) call upon the county attorney or attorney general for such legal services as the district may require, or in the discretion of the directors, employ private legal counsel;

(12) withhold the delivery of water upon which there are any defaults or delinquencies of payment, and otherwise dispose of that water while the default or delinquency continues;

(13) borrow money and incur indebtedness and issue bonds to finance works as provided by this act;

(14) refund bonded indebtedness incurred by the district as provided by this act;

(15) after a hearing held in accordance with section 17 [89-3417] of this act, make assessments sufficient to meet the budgetary requirements for the coming year;

(16) contract for service, for water furnished, or for the sale of water with any person;

(17) fix and revise from time to time and collect rates, fees, and other charges for the services, facilities, or water furnished by the district to any person;

(18) allocate or reallocate unused waters of the district;

(19) co-operate with; accept grants, loans, and other assistance from; act as agent for; and enter into agreements with any and all state or federal agencies, and exercise all necessary or convenient powers in connection therewith;

(20) enter into any obligation or contract with an agency of the federal government for the construction, operation, and maintenance of works; or for the assumption as principal or guarantor of indebtedness to the United States on account of district lands under the provisions of the federal reclamation act and rules established under that act; or contract with an agency of the federal government for a water supply under any federal act providing for or permitting such a contract. However, the action must be approved by a majority of the electors voting at an election held as provided in section 24 [89-3424]. If a contract is made with an agency of the federal government, the directors may deposit bonds of the district with the United States at ninety per cent (90%) of their par value, to secure the amount to be paid by the district to the United States under any contract, the interest on the bonds of the district to be applied as specified by the contract. If bonds of the district are deposited with the United States, it is the duty of the directors to make an assessment sufficient to meet all payments accruing under the terms of any contract with the United States;

(21) accept appointment of the district as fiscal agent for the United States or authorization of the district to make collections of moneys for or on behalf of the United States in connection with any federal reclamation projects and the district is authorized to act and to assume the duties and liabilities incident to this action. However, the action must be approved by a majority of the electors voting at an election held as provided in section 24 [89-3424]. The directors may do all things required by federal statutes and rules and require prompt payment of all charges as a prerequisite to water service;

(22) in addition to all voted indebtedness, borrow money as necessary but the amount shall not at any one time exceed five per cent (5%) of the taxable valuation of real property in the district;

(23) mortgage property owned by the district if the terms of the mortgage are not inconsistent with the provisions of a resolution authorizing the sale of bonds;

(24) use any surplus funds to purchase outstanding bonds;

(25) make contracts incidental to the performance of the district's functions, and employ and fix the compensation of employees, agents or consultants as are deemed necessary, including but not limited to, a manager, attorneys, accountants, engineers, construction and financial experts;

(26) co-operate with soil and water conservation districts to obtain agreements to carry out soil conservation measures and proper farm plans from owners of lands situated in the drainage area above each retention reservoir to be installed with federal assistance.

**History:** En. Sec. 14, Ch. 100, L. 1969.

**89-3415. Participation in federal programs.** A district organized under this act, by itself or in conjunction with others, as a sponsoring organization to participate in all federal programs including, but not limited to, the Watershed Protection and Flood Prevention Act of 1954 (68 Stat. 666), the federal Water Project Recreation Act of 1965 (79 Stat. 213), the federal Reclamation Act of 1902 (32 Stat. 388), and amendments to those acts.

**History:** En. Sec. 15, Ch. 100, L. 1969.

**Compiler's Notes**

The Watershed Protection and Flood Prevention Act of 1954, referred to in this section, is compiled in the United States Code as Tit. 16, sec. 1001 et seq. and Tit. 33, sec. 701b note.

The federal Water Project Recreation Act of 1965 is compiled in the United States Code as Tit. 16, sec. 4601-12.

The federal Reclamation Act of 1902 is compiled in the United States Code as Tit. 43, sec. 371 et seq.

**89-3416. Assessments.** (1) To the extent that anticipated revenues from rates, fees, and other charges fixed pursuant to section 14, subsection (17) [89-3414 (17)] will not be sufficient to meet the district's anticipated obligations for annual operation, maintenance, and replacement or depreciation of works, or for payment of the interest and principal on bonded indebtedness, the directors may make an assessment of not more than two (2) mills on all taxable real property in the district for the purpose of fully meeting such obligations.

(2) In addition to the assessment authorized by subsection (1), the directors may annually make an assessment of up to three (3) mills on the taxable real property in the district to pay interest and principal on bonded indebtedness.

(3) The assessments are a lien upon each lot or parcel of land within the district to the extent of the assessment on each.



(4) All assessments have the same force and effect as other liens for taxes and their collection shall be enforced in the way provided for enforcement of liens for county taxes. Assessments, if not paid, become delinquent at the same time as county taxes.

(5) Except as provided in section 29 [89-3429], approval of the electors is not required for the making of these assessments.

History: En. Sec. 16, Ch. 100, L. 1969.

**89-3417. Notice of public budget hearing.** (1) The directors shall, prior to the first Monday in May of each year, give notice as provided in section 3, subsection (11) [89-3403 (11)] of this act of the intention to hold a public budget hearing. The notice shall include the date, time, place, and general agenda.

(2) At the hearing, the directors shall:

- (a) review the present budget;
- (b) present the budget for the next year;
- (c) hear and consider protests from any elector;
- (d) adopt the budget for the next year;
- (e) set the assessment for the next year.

History: En. Sec. 17, Ch. 100, L. 1969.

**89-3418. Directors to inform county assessor and treasurer annually concerning budget, special assessments and realty—multi-county districts.** (1) Before the second Monday in July of each year, the directors shall provide the county assessor and treasurer with:

- (a) the budget for the current fiscal year;
- (b) a statement of the amount of special assessments to be collected for the districts;
- (c) a listing of all real property within the district.

(2) If the district is located in more than one (1) county, the directors shall provide this information to each of the county assessors and treasurers.

History: En. Sec. 18, Ch. 100, L. 1969.

**89-3419. Collection of special assessments—multi-county districts—investment of surplus funds—interest.** (1) The treasurer of each county in which the district is located shall collect special assessments at the same time and in the same way as county taxes.

(2) If the district is located in more than one (1) county, all assessments collected shall be deposited with the treasurer of the county in which the assessments were collected.

(3) The directors shall direct the county treasurer to invest any surplus district funds in saving or time deposits in a state or national bank insured by the Federal Deposit Insurance Corporation or in direct obligations of the United States government payable within one hun-

dred eighty (180) days from the time of investment. All interest collected on the deposits or investments shall be credited to the fund from which the money was withdrawn. However, five per cent (5%) of the interest shall be deposited in the general fund of the county.

History: En. Sec. 19, Ch. 100, L. 1969.

**89-3420. Condemnation authorized—water rights.** The district may exercise the right of eminent domain in the manner provided by the law to take private property for public use, with just compensation, where the taking is necessary for the purposes of the district. Water rights as such shall not be subject to such taking, but may be taken as an incident to the condemnation of land to which such rights are appurtenant, where the taking of the land is the principal purpose of the condemnation.

History: En. Sec. 20, Ch. 100, L. 1969.

**89-3421. Annual written report of directors' activities.** Before August 1 of each year, the directors shall send a written report of their activities during the previous fiscal year to the court and to the water board. Reports shall be in the form, and contain the information, prescribed by the water board.

History: En. Sec. 21, Ch. 100, L. 1969.

**89-3422. State examiner to examine financial records—report—fee.** At least once each year the state examiner shall examine the financial records of each district and file a report of the examination with the water board and court. The state examiner shall collect a fee for the examination equal to that charged irrigation districts.

History: En. Sec. 22, Ch. 100, L. 1969.

**Cross-References**

Examiner's functions transferred, sec. 82A-903(3)(t).

**89-3423. Persons entitled to vote.** (1) Only persons who are taxpayers upon and owners of real property located within the district and whose names appear upon the last completed assessment roll of some county within the district for state, county and school district taxes are electors and shall be entitled to vote in elections, provided that:

- (a) an elector need not reside within the district in order to vote;
- (b) where a corporation owns taxable real property within the boundaries of the conservancy district, the authorized agent of such corporation shall be entitled to cast a vote on behalf of the corporation;
- (c) where land is under contract of sale to a purchaser and the contract is recorded, only the purchaser shall have the right to vote;
- (d) guardians, executors, administrators, and trustees of real property within the district, shall be entitled to cast the vote for the owner of the land.

(2) When voting, an agent of a corporation or of co-owners, or a guardian, executor, administrator, trustee, or purchaser under contract of sale, may be required to show his authority by the judges of the election.

History: En. Sec. 23, Ch. 100, L. 1969.

**89-3424. Election procedures.** Election procedures after organization are:

(1) The directors shall designate the polling places, at least one (1) in each county, and hours when the polls will be open;

(2) Notice shall be published of the location of polling places and hours when the polls are open as provided in section 3, subsection (11) [89-3403 (11)] of this act;

(3) The directors shall appoint three (3) judges for each polling place and fix their compensation;

(4) The judges shall appoint one (1) of their number as clerk of the election;

(5) The clerks and recorders of the counties in which the election is to be held shall supply poll lists, registers, ballots, and other necessary election supplies;

(6) The judges shall cause the ballots to be counted and certify the results to the directors;

(7) The directors shall canvass the returns;

(8) The directors shall reimburse the counties for actual expenses incurred in the election.

History: En. Sec. 24, Ch. 100, L. 1969.

**89-3425. Challenging voters — oath — penalty for false subscription.** An elector may challenge any person who claims the right to vote. Before voting, any person challenged must take and sign the following oath or affirmation administered by an election judge:

“I \_\_\_\_\_(name) solemnly swear (or affirm) that I am an elector of the district and have not voted today.”

False subscription to the oath or affirmation is perjury and punishable as such.

History: En. Sec. 25, Ch. 100, L. 1969.

**89-3426. Issuance of bonds—maximum term—sale as single issue of multi-purpose bonds.** A district may issue bonds payable from revenues, assessments, or both, or the district may use other financing as provided by this act for the cost of works. Bonds issued shall be for a maximum term of not to exceed forty (40) years. Bonds for more than one purpose may be sold as a single issue.



**History:** En. Sec. 26, Ch. 100, L. 1969; amd. Sec. 43, Ch. 234, L. 1971.

**Effective Date**

Section 44 of Ch. 234, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 9, 1971.

**Amendments**

The 1971 amendment deleted from the end of the second sentence "and a maximum rate of interest not more than six per cent (6%)."

**89-3427. Determination of amount of bonds to be issued.** In determining the amount of bonds to be issued, the directors may include:

- (1) all costs of works;
- (2) all costs and estimated costs of issuance of the bonds;
- (3) interest which they estimate will accrue on money borrowed during the construction period and for six (6) months after the period.

**History:** En. Sec. 27, Ch. 100, L. 1969.

**89-3428. Resolution for issuance of bonds—notice—election.** When the directors find it necessary to issue bonds, the directors shall:

- (1) pass a resolution which includes:
  - (a) the purpose or purposes for which the bonds will be issued;
  - (b) the maximum amount and term of the bonds;
  - (c) the maximum interest rate the bonds will bear;
  - (d) whether the bonds will be repaid from revenues, assessments, or both.
- (2) give notice as provided in section 3, subsection (11) [89-3403 (11)] of this act which shall include the resolution adopted by the directors, location of polling places, and hours when the polls will be open;
- (3) hold an election as provided by section 24 [89-3424] of this act.

**History:** En. Sec. 28, Ch. 100, L. 1969.

**89-3429. Approval of bond issue at election—authorizes assessments—recording of election results—validity of election—single proposition.**

- (1) For a bond issue to be approved, forty per cent (40%) of the qualified electors must vote thereon, and sixty per cent (60%) of those voting must approve the issue.
- (2) Approval of the bond issue shall authorize the directors to make assessments as provided in section 16 [89-3416] necessary to pay the principal and interest on bonds issued.
- (3) The directors shall enter the results of the election in their records.
- (4) If otherwise fairly conducted, no irregularities or informalities shall invalidate the election.

(5) Bonds for more than one purpose may be submitted to the electors as a single proposition.

History: En. Sec. 29, Ch. 100, L. 1969.

**89-3430. Resolution providing for form, execution and issuance of bonds—bids—private sale—sale price—rejection of bids.** If a bond issue is approved, the directors shall by resolution provide for the form and execution of the bonds and for issuance of all or any part of the bonds. After adequate notice that sealed proposals will be received, the directors may award the purchase of all or a part of the issue to the best bidder or bidders, and may sell at private sale any or all bonds not sold on bids.

The said bonds will be sold for not less than their par value with accrued interest to date of delivery, and all bidders must state the lowest rate of interest at which they will purchase the bonds at par. The board shall reserve the right to reject any and all bids and to sell the said bonds at private sale.

History: En. Sec. 30, Ch. 100, L. 1969.

**89-3431. Comparable to municipal bonds—exempt from taxation.** Bonds issued under this act have the same force, value, and use as bonds issued by a municipality and are exempt from taxation as property within the state of Montana.

History: En. Sec. 31, Ch. 100, L. 1969.

**89-3432. Interim receipts—negotiability.** Pending preparation of the bonds sold under this act, receipts or certificates may be issued to purchasers in the form, and with provisions, as determined by the directors. Bonds and interim receipts or certificates are fully negotiable as provided by the Uniform Commercial Code—Investment Securities.

History: En. Sec. 32, Ch. 100, L. 1969.

**Cross-References**

Uniform Commercial Code—Investment Securities, sec. 87A-8-101 et seq.

**89-3433. Registration of bonds—copy to be furnished county treasurer.** (1) When duly executed, all bonds issued under this act shall be registered by the county treasurer of the county in which the largest portion of the taxable valuation of real property of the district is located. They shall be registered in a book provided for that purpose before being delivered to the purchaser.

(2) The registration shall show:

- (a) the number and amount of each bond;
- (b) the date of issue and date redeemable;

(c) the name of the purchaser;

(d) the amount and due date of all payments required on the bonds.

(3) The directors shall provide the county treasurer with an unsigned and canceled printed copy of each issue of bonds of the district. The copy shall be preserved in his office.

**History:** En. Sec. 33, Ch. 100, L. 1969.

**89-3434. Deposit of sales proceeds — disposition — investment.** (1) Proceeds from the sales of bonds shall be deposited with the county in which the largest portion of the taxable valuation of real property of the district is located.

(2) The county treasurer shall place the proceeds of the bond sale to the credit of the district. The proceeds shall be paid by the county treasurer on written order of the directors. Proceeds shall only be spent for the purposes for which the bonds were issued.

(3) The directors shall instruct the county treasurer to deposit any part of the proceeds which is not immediately needed for the purpose for which the bonds were issued in a saving or time deposit in a state or national bank insured by the Federal Deposit Insurance Corporation or to invest in direct obligations of the United States government. The obligations shall be payable within not to exceed one hundred eighty (180) days from the time of deposit or investment.

**History:** En. Sec. 34, Ch. 100, L. 1969.

**89-3435. Refunding bonds authorized—redemption.** (1) Refunding bonds may be issued in the same way as any other bonds authorized by this act.

(2) All bonds, original issue or refunding issue, shall be redeemable when one-half ( $\frac{1}{2}$ ) of the term or ten (10) years of the term for which they were issued, whichever may be the less, has expired. Redemption may be made on any interest due date of any bond prior to its maturity after the bond shall be subject to redemption as herein provided. The right of redemption, as herein provided, must be stated on the face of each bond.

**History:** En. Sec. 35, Ch. 100, L. 1969.

**89-3436. Fund for retirement of bonds—investment and disbursement.** Revenue, assessment, and other funds on hand, including reserves pledged for the payment and security of outstanding bonds may be deposited in a fund created for the retirement of bonds and may be invested and disbursed as provided by this act, to the extent consistent with the resolution authorizing the outstanding bonds.

**History:** En. Sec. 36, Ch. 100, L. 1969.



**89-3437. Revolving funds—purpose—excess money—funds deposited with county treasurer.** (1) The directors by resolution may establish revolving funds to finance, on a reimbursable basis:

(a) construction, purchase, lease and operation of revenue-producing works;

(b) contracts to provide services or facilities.

(2) Money in the revolving fund shall not be spent for any purposes other than those specified in the resolution. However, excess money may be transferred to any sinking and interest fund of the district.

(3) The county treasurer of the county having the largest portion of the taxable valuation of real property of the district shall maintain a separate account for each revolving fund of the district, and all money collected under the resolution shall be deposited with the county treasurer.

**History:** En. Sec. 37, Ch. 100, L. 1969.

**89-3438. Petition for merger of districts—hearing and notice—merger into new district—inclusion in another district—majority of electors may kill merger by petition—existing obligations.** (1) In case two (2) or more districts have been organized in a territory which, in the opinion of the directors of each of the districts, should constitute but one (1) district, the directors of the districts may petition the court for an order merging the districts into a single district. The petition shall be filed in the office of the clerk of the district court in and for that county which has the largest portion of taxable valuation of property within the districts sought to be included, as shown by the tax rolls of the respective counties. The petition shall set forth facts showing that the purposes of this act would be served by the merging of the districts, and that the merger would promote the economical execution of the purposes for which the districts were organized. A copy of the petition shall be filed with the water board.

(2) Upon the filing of the petition, the court shall by order fix a time and place of hearing; and the clerk shall give notice as specified in section 3, subsection (11) [89-3403 (11)] of this act as well as by mail to the directors of the districts which would be merged. The notice shall contain the purpose, time, and the place of the hearing.

(3) Upon the hearing, should the court find that the averments of the petition are true and that the districts, or any of them, could feasibly and profitably be merged, it shall order that the merger take place and the districts shall be merged into one (1) district and proceed as such. The court shall designate the corporate name of the district, and further proceedings shall be taken as provided for in this act. The court shall by order appoint the directors of the district, who shall thereafter have powers and be subject to rules as are provided for directors in districts created in the first instance.

(4) Instead of organizing a new district from the constituent districts, the court may, in its discretion, direct that one (1) or more of the

districts described in the petition be included in another of the districts, which other shall continue under its original corporate name and organization; or the court may direct that the district or districts so absorbed shall be represented on the directors of the original districts, designating what members of the directors of the original district shall be retired from the new board, and what members representing the included district or districts shall take their places.

(5) If the court receives a petition opposing the merger, signed by a majority of the electors of any of the concerned districts, the court shall not grant the order and shall dismiss the petition.

(6) Upon merger or inclusion, existing obligations shall remain exclusively with those who bore them prior to the merger or inclusion, except with the written consent, given prior to the merger or inclusion, of those who did not bear the obligations.

**History:** En. Sec. 38, Ch. 100, L. 1969.

**89-3439. Procedure for annexing realty.** To annex real property to the district, the procedure is:

(1) The directors shall petition the court.

(2) The petition shall:

(a) give a general description of the real property to be annexed sufficient to enable a person to determine if his property is in the proposed annexation;

(b) describe the benefits to accrue to the real property as a result of the annexation.

(3) The court shall:

(a) give notice and hold a hearing on the petition;

(b) upon good cause shown, order or deny the annexation.

**History:** En. Sec. 39, Ch. 100, L. 1969.

**89-3440. Pre-annexation bonds not lien without prior agreement.** Real property annexed to a district shall not incur any liens by reason of bonds issued before annexation unless agreed to by the owners of the annexed property, in writing, prior to annexation.

**History:** En. Sec. 40, Ch. 100, L. 1969.

**89-3441. Exclusion of territory from district—procedure.** Any territory included within any district formed under the provisions of this act, and not benefited in any manner by such district, or its inclusion therein, may be excluded therefrom.

The procedure for exclusion is:

(1) A petition for exclusion shall be initiated by either the directors or the owner or owners of the land sought to be excluded.

(2) The petition shall give a description of the territory sought to be excluded sufficient to enable a person to determine if his property is in the proposed exclusion and shall set forth that such territory is not

benefited in any manner by the district or its continued inclusion therein, and shall request that such territory be excluded from the district.

(3) When owners of property initiate the petition for exclusion, the petition shall be filed with the secretary of the district and shall be accompanied by a deposit of one hundred dollars (\$100) to meet the costs incident to the process of exclusion. The unexpended balance of the deposit shall be returned to the petitioner.

(4) Upon the filing of such petition with the secretary of the district, the secretary shall duly call a meeting of the directors to consider the petition. The directors shall approve or disapprove of the merits of the petition. The secretary shall then file the petition, together with a copy of the action of the directors, with the court.

(5) The court shall give notice, hold a hearing, and issue an order either granting or denying the petition.

History: En. Sec. 41, Ch. 100, L. 1969.

**89-3442. Procedure for dissolution of district.** (1) The procedure for dissolution of a district is:

(a) a resolution shall be passed by the directors requesting dissolution; or

(b) a petition signed by twenty per cent (20%) of the electors representing ten per cent (10%) of the taxable valuation of real property in the district shall be presented to the directors; or

(c) if the district or its directors have been inactive for one (1) year or more, any elector may present a petition.

(2) The resolution or petition shall be presented to the court by the directors, or by the petitioners if the directors remain inactive.

(3) Not more than one (1) resolution or petition may be presented to the court in any twenty-four (24) month period, and no such petition may be presented during the first twenty-four (24) months after a district's initial organization.

History: En. Sec. 42, Ch. 100, L. 1969.

**89-3443. Dissolution election — majority approval required.** (1) After receipt of petition or resolution for dissolution, the court shall order an election in the way provided by section 24 [89-3424] of this act.

(2) For dissolution to be approved, a majority of the electors voting must favor dissolution.

History: En. Sec. 43, Ch. 100, L. 1969.

**89-3444. Submission of termination plan—termination by directors or receiver—court order—retention of jurisdiction.** (1) In the event the vote is for dissolution, any qualified elector, or the board of directors of the district may, within the time fixed by the court, present a written



plan for terminating the affairs of the district which shall include assignment of any water rights and works owned by the district.

(2) The plan may specify that the affairs of the district shall be terminated by the directors or by a receiver appointed by the court.

(3) On a day fixed by the court, the court shall consider the plan or plans and shall enter an order establishing a plan for the termination of the affairs.

(4) The court shall retain jurisdiction to modify the plan and shall supervise the termination.

History: En. Sec. 44, Ch. 100, L. 1969.

**89-3445. Appointment of receiver—directors' authority ceases—assessments by receiver—annual assessments—disposition of assessments.**

(1) If no plan is presented on or before the date set by the court, the court shall appoint a receiver to terminate the affairs of the district under the supervision of the court.

(2) Upon the appointment of any receiver all the authority of the directors shall cease. However, until dissolution, the receiver shall have authority to levy assessments for:

- (a) the payment of obligations of the district;
- (b) the costs of termination.

(3) The directors, or if there is a receiver, then the receiver with the approval of the court, shall make assessments each year in an amount large enough to retire the obligations of the district.

(4) If a receiver has been appointed, he shall direct, under court supervision, the disposition of all assessments collected.

History: En. Sec. 45, Ch. 100, L. 1969.

**89-3446. Entry of dissolution order—certified copy.** When it appears to the satisfaction of the court that:

- (1) all obligations of the district have been discharged;
- (2) all the costs of termination have been paid, the court shall enter an order dissolving the district. A certified copy of the order shall be recorded by the clerk of the court in all counties in which the district was situated and filed with the secretary of state.

History: En. Sec. 46, Ch. 100, L. 1969.

**89-3447. County general funds to receive funds remaining after dissolution—proportion.** All funds remaining after dissolution of a district shall be deposited in the general fund of the counties in which the district is located in proportion to the taxable value of property within the district in each county.

History: En. Sec. 47, Ch. 100, L. 1969.

**89-3448. No power to generate, distribute or sell electric energy.** Nothing in this act shall be construed to grant to the district the power to generate, distribute or sell electric energy.

History: En. Sec. 48, Ch. 100, L. 1969.

**89-3449. Other agencies not affected.** The provisions of this act shall not be construed to, in any manner, abrogate or limit the rights, powers, duties and functions of the water board, state soil conservation committee, soil and water conservation districts, state board of health, or the fish and game commission; but shall be held to be supplementary thereto and in aid thereof.

**History:** En. Sec. 49, Ch. 100, L. 1969.

#### Separability Clause

Section 50 of Ch. 100, Laws 1969 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its

applications, the part remains in effect in all valid applications that are severable from the invalid applications."

#### Effective Date

Section 51 of Ch. 100, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 24, 1969.

### CHAPTER 35—FLOODWAY MANAGEMENT AND REGULATION

- Section 89-3501. Findings.  
 89-3502. Policy and purposes.  
 89-3503. Definitions.  
 89-3504. Program for delineation of floodways—floodway-encroachment lines—land-use regulations.  
 89-3505. Artificial obstructions and nonconforming uses as nuisances.  
 89-3506. Establishment of artificial obstructions or nonconforming uses unlawful—permitted open space uses—prohibited nonconforming uses.  
 89-3507. Permits for obstructions—application—factors considered—fees.  
 89-3508. Powers and duties of board relative to obstructions.  
 89-3509. Authority to enter and investigate lands or waters.  
 89-3510. Obstructions exempt where drainage area is small.  
 89-3511. Orders and rules—judicial remedy.  
 89-3512. Floodway obstruction removal fund.  
 89-3513. Penalties for violation.  
 89-3514. Permit construed as added requirement—exception—immunity.  
 89-3515. Remedies not exclusive.

**89-3501. Findings.** The people of the state of Montana find that recurrent flooding of a portion of the state's land resources causes loss of life, damage to property, disruption of commerce and governmental services, and unsanitary conditions; all of which are detrimental to the health, safety, welfare and property of the occupants of flooded lands and the people of this state, and that the public interest necessitates management and regulation of flood-prone lands and waters in a manner consistent with sound land and water use management practices which will prevent and alleviate flooding threats to life and health and reduce private and public economic losses.

**History:** En. Sec. 1, Ch. 393, L. 1971.

#### Title of Act

An act relating to management and regulation of the floodways of water-courses as prescribed; to define terms; to

provide for certain duties and powers of the Montana water resources board as prescribed; to provide for a floodway obstruction removal fund; to declare certain acts unlawful; and to provide for penalties.

**89-3502. Policy and purposes.** The policy and purposes of this act are to guide development of the floodway areas of this state consistent with the enumerated findings; to recognize the right and need of water-courses to periodically carry more than the normal flow of water; to

provide state co-ordination and technical assistance to local units in management of floodway areas; to co-ordinate federal, state and local management activities for floodway areas; to encourage local governmental units to manage flood-prone lands including the adoption, enforcement and administration of land-use regulations and to provide the Montana water resources board with authority necessary to carry out a comprehensive floodway management program for the state.

Specifically, it is the purpose of this act to:

- (1) restrict or prohibit uses which are dangerous to health, safety of property in times of flood or cause increased flood heights or velocities;
- (2) require that uses vulnerable to floods, including public facilities which serve such uses, be provided with flood protection at the time of initial construction;
- (3) develop and provide information to identify lands which are unsuited for certain development purposes because of flood hazard.

History: En. Sec. 2, Ch. 393, L. 1971.

**89-3503. Definitions.** As used in this act, unless the context otherwise requires:

- (1) "A flood of fifty-year frequency" shall mean a flood magnitude expected to recur on the average of once every fifty (50) years, or a flood magnitude which has a two per cent (2%) chance of occurring in any given year;
- (2) "Artificial obstruction" shall mean any obstruction which is not a natural obstruction;
- (3) "Channel" shall mean the geographical area within either the natural or artificial banks of a watercourse or drainway;
- (4) "Board" shall mean the Montana water resources board;
- (5) "Designated floodway" shall mean a floodway whose limits have been designated and established by order of the board.
- (6) "Drainway" shall mean any depression two (2) feet or more below the surrounding land serving to give direction to a current of water less than nine (9) months of the year, having a bed and well-defined banks; provided, that in the event of doubt as to whether a depression is a watercourse or drainway, it shall be presumed to be a watercourse;
- (7) "Flood" shall mean the water of any watercourse or drainway which is above the bank or outside the channel and banks of such watercourse or drainway;
- (8) "Floodway" shall mean the channel of a watercourse or drainway and those portions of the floodplain adjoining the channel which are reasonably required to carry and discharge the flood water of any watercourse or drainway;
- (9) "Floodway-encroachment lines" shall mean the lines limiting a designated floodway;
- (10) "Floodplain" shall mean the area adjoining the watercourse or drainway which has been or may hereafter be covered by flood water;



(11) "Establish" shall mean construct, place, insert, or excavate;

(12) "Natural obstruction" shall mean any rock, tree, gravel, or analogous natural matter that is an obstruction and has been located within the floodway by a nonhuman cause;

(13) "Obstruction" shall mean any dam, wall, riprap, embankment, levee, dike, pile, abutment, projection, revetment, excavation, channel rectification, bridge, conduit, culvert, building, refuse, automobile body, fill, or other analogous structure or matter in, along, across, or projecting into any floodway which may impede, retard or change the direction of the flow of water, either in itself or by catching or collecting debris carried by such water, or that is placed where the natural flow of the water would carry the same downstream to the damage or detriment of either life or property;

(14) "Owner" shall mean any person who has dominion over, control of, or title to an obstruction;

(15) "Political subdivision" shall mean any incorporated city or town or any county organized and having authority to adopt and enforce land-use regulations; and

(16) "Watercourse" shall mean any depression two (2) feet or more below the surrounding land serving to give direction to a current of water at least nine (9) months of the year, having a bed and well-defined banks; provided, that it shall, upon order of the board, also include any particular depression which would not otherwise be within the definition of watercourse.

History: En. Sec. 3, Ch. 393, L. 1971.

**89-3504. Program for delineation of floodways — floodway-encroachment lines—land-use regulations.** (1) The board shall initiate a comprehensive program for the delineation of designated floodways for every watercourse and drainway in the state. It shall make a study relating to the acquiring of flood data, and have authority to enter into arrangements with the United States geological survey, the United States army corps of engineers or any other state or federal agency for such acquisition.

(2) When sufficient data have been acquired to reasonably locate the floodway of a flood of fifty-year frequency, the board shall establish, by order, after a public hearing, floodway-encroachment lines for such a floodway within which a political subdivision may establish land-use regulation. The board shall furnish such data to officials of the political subdivision having jurisdiction over such areas together with a map outlining the areas involved, a copy of this act, adopted rules and regulations of the board, and suggested minimum standards. These standards, rules and regulations shall reflect gradations in flood hazard based on flood frequency and other criteria as outlined in subsection (2) of section 7 [89-3507 (2)] of this act. The location of the encroachment lines shall be the estimated outer boundary of the floodway of fifty-year frequency flood, as determined from the available data. The board shall record all floodway-encroachment lines established by it in the office of the county clerk and recorder of each county in which such lines are found. The

board shall have the power to alter such lines at any later time, by order, after a public hearing if a re-evaluation of the then available flood data warrants it. Notice of any such hearing or order of the board establishing or altering any such line shall be given by publishing such notice once each week for three consecutive weeks in a legal newspaper published or of general circulation in the area involved, the last publication of which shall be not less than ten (10) days prior to the date set for the hearing or the effective date of such order.

(3) If within one (1) year from the date of transmittal of the floodplain information to officials of the political subdivisions, any political subdivision has failed to adopt land-use regulations which meet or exceed the minimum standards of the board, the designated floodway shall be enforced and no artificial obstruction or nonconforming use shall be established by any person within the floodway-encroachment lines for such a fifty-year flood as established by the board under subsection (2) of this section, unless specifically authorized by the board.

**History:** En. Sec. 4, Ch. 393, L. 1971.

**89-3505. Artificial obstructions and nonconforming uses as nuisances.** Any artificial obstruction or nonconforming use in any designated floodway enforced under subsection (3) of section 4 [89-3504 (3)] of this act and not exempt under section 6 [89-3506] of this act is hereby declared to be a public nuisance unless a permit has been obtained for such artificial obstruction or nonconforming use from the board.

**History:** En. Sec. 5, Ch. 393, L. 1971.

**89-3506. Establishment of artificial obstructions or nonconforming uses unlawful—permitted open space uses—prohibited nonconforming uses.** (1) It shall be unlawful for a person to establish any artificial obstruction or nonconforming use within a designated floodway, or (2) for any owner to permit any artificial obstruction to remain within a designated floodway without a permit from the board. This act shall not affect any existing artificial obstruction or nonconforming use established in the floodway prior to the effective date of this act and before the board has enforced a designated floodway under subsection (3) of section 4 [89-3504 (3)] of this act; provided, that no person shall make nor shall any owner allow alterations of any artificial obstruction within a designated floodway whether the obstruction proposed for alteration was located in the floodway before or after the effective date of this act except upon express written approval of the board. Maintenance of an obstruction shall not be construed to be an alteration.

(2) The following open space uses shall be permitted within the designated floodway, to the extent that they are not prohibited by any other ordinance or statute, and provided they do not require structures other than portable structures, fill, or permanent storage of materials or equipment; (a) agricultural uses (b) industrial-commercial uses such as loading areas, parking areas, emergency landing strips (c) private and public recreational uses such as golf courses, tennis courts, driving ranges,

archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife management and natural areas, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, hiking and horseback riding trails (d) forestry, including processing of forest products with portable equipment (e) residential uses such as lawns, gardens, parking areas and play areas (f) excavations subject to the issuance of a permit under section 7 [89-3507].

(3) The following nonconforming uses shall be prohibited within the designated floodway: (a) Any building for living purposes or place of assembly or permanent use by human beings (b) any structure or excavation that will cause water to be diverted from the established floodway, cause erosion, obstruct the natural flow of water, or reduce the carrying capacity of the floodway (c) the construction or permanent storage of any object subject to flotation or movement during flood level periods.

**History:** En. Sec. 6, Ch. 393, L. 1971.

**89-3507. Permits for obstructions—application—factors considered—fees.** (1) The board shall have the power to issue permits for the establishment or alteration of obstructions which would otherwise violate section 6 [89-3506] of this act. The application for the permit shall contain such information as the board shall require, including complete maps, plans, profiles and specifications of the obstruction and watercourse or drainway.

(2) In passing upon such application, the board shall consider (a) the danger to life and property by water which may be backed up or diverted by such obstruction, (b) the danger that the obstruction will be swept downstream to the injury of others, (c) the availability of alternate locations, (d) the construction or alteration of the obstruction in such a manner as to lessen the danger, (e) the permanence of the obstruction, (f) the anticipated development in the foreseeable future of the area which may be affected by the obstruction, and (g) such other factors as are in harmony with the purpose of this act. The board may make a part of such permit any reasonable conditions it may deem advisable. In order for the permit to continue to remain in force, the obstruction must be maintained so as to comply with the conditions and specifications of the permit.

(3) Permits for obstructions to be established in the floodway of watercourses must be specifically approved or denied within a reasonable time by the board; permits for obstructions in the floodways or drainways shall be conclusively deemed to have been granted sixty (60) days after the receipt of such application by the board, or after such time as the board shall by rule specify, unless the board notifies the applicant that the permit is denied.

(4) Every application for a permit shall be accompanied by a non-refundable application fee of ten dollars (\$10) which the state treasurer shall credit to the floodway obstruction removal fund.

**History:** En. Sec. 7, Ch. 393, L. 1971.



**89-3508. Powers and duties of board relative to obstructions.** The powers and duties of the board relative to obstructions in a board floodway shall include the following:

(1) Where an obstruction to a floodway established under subsection (2) of section 4 [89-3504 (2)] of this act has been created by fallen trees, silt, debris, wreckage, unanchored automobile bodies, and like matter, the board may, in its discretion, remove the obstruction, in which case the cost of removal shall be borne by the board; and

(2) Where, after investigation, notice, and hearing, an order has been issued to the owner of an obstruction not exempt under the provisions of section 6 [89-3506] of this act for its removal or repair, and the order is not complied with within such reasonable time as may be prescribed, or if the owner cannot be found or determined, the board may make or cause such removal or repairs to be made, the cost of which shall be borne by the owner and shall be recoverable in the same manner as debts are now recoverable by law.

**History:** En. Sec. 8, Ch. 393, L. 1971.

**89-3509. Authority to enter and investigate lands or waters.** The board, its agents, surveyors, or other employees, may make reasonable entry upon any lands and waters in the state for the purpose of making any investigation, survey, removal, or repair contemplated by this act. An investigation of any natural or artificial obstruction shall be made by the board either on its own initiative, on the written request of any three (3) titleholders of land abutting the watercourse or drainway involved, or on the written request of any political subdivision.

**History:** En. Sec. 9, Ch. 393, L. 1971.

**89-3510. Obstructions exempt where drainage area is small.** This act shall not extend to any obstruction in the floodway of a watercourse or drainway where the drainage area above the same, either within or without the state, is less than twenty-five (25) square miles in extent, unless a particular watercourse or drainway is expressly declared to be within the coverage of this act by order of the board.

**History:** En. Sec. 10, Ch. 393, L. 1971.

**89-3511. Orders and rules—judicial remedy.** The board may issue such orders and rules as are necessary to implement the provisions of this act. If an order is issued to the owner of an artificial obstruction not exempt under the provisions of section 6 [89-3506] of this act for its removal or repair, such order shall not become effective less than (10) days after a hearing is held relating to such order. In addition to any requirement imposed by subsection (2) of section 4 [89-3504 (2)] of this act, where any order is issued which affects with particularity the land adjacent to any watercourse or drainway, notice of the contents of such order and of any required hearing shall be mailed by the board to the titleholder of such land not less than ten (10) days before the effective date of such order, or, if there is a required hearing, to the titleholder of such land and to the owner of the obstruction not less than ten (10)

days before the date of such hearing; provided, that such notice need not be given to the owner of the obstruction for an order issued pursuant to subsection (2) of section 8 [89-3508 (2)] of this act if the owner cannot be found or determined. All orders and rules issued by the board shall be on file at the offices of the board and in the office of the county clerk of each county affected by such order or rule. Any person aggrieved by any order of the board issued under this act may appeal from such order to a court of competent jurisdiction within thirty (30) days after its effective date. In the event such an appeal is taken, enforcement of such order shall be stayed pending the outcome of such appeal. Service of notice of the appeal shall be made upon the director of the board.

**History:** En. Sec. 11, Ch. 393, L. 1971.

**89-3512. Floodway obstruction removal fund.** The state treasurer is hereby directed to create and establish the floodway obstruction removal fund and to credit to such fund for the removal of obstructions as provided in subsection (1) of section 8 [89-3508 (1)] of this act, such money as shall be specifically appropriated or reappropriated during any biennium by the legislature. The Montana water resources board may allocate money from the floodway obstruction removal fund for purposes provided in subsection (1) of section 8 [89-3508 (1)] of this act.

**History:** En. Sec. 12, Ch. 393, L. 1971.

**89-3513. Penalties for violation.** (1) Any person who violates section 6 [89-3506] of this act shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not more than one hundred dollars (\$100), or be imprisoned in the county jail for not more than ten (10) days, or be both so fined and imprisoned. Each day's continuance of a violation shall be deemed a separate and distinct offense.

**History:** En. Sec. 13, Ch. 393, L. 1971.

**89-3514. Permit construed as added requirement—exception—immunity.** (1) The granting of a permit under the provisions of this act shall in no way affect any other type of approval required by any other statute or ordinance of the state, of any political subdivision or of the United States, but shall be construed as an added requirement; provided, that if a political subdivision enacts and enforces land-use regulations which meet or exceed the minimum standards of the board, the board's recommendations in regard to artificial obstructions or nonconforming uses shall be advisory only. The grant or denial of a permit shall not have any effect on any remedy of any person at law or in equity; provided, that where it is shown that there is a wrongful failure to comply with this act, there shall be a rebuttable presumption that the obstruction was the proximate cause of the flooding of the land of any person bringing suit.

(2) No permit for the construction of any structure to be established within a designated floodway shall be granted by any political subdivision unless the applicant has first obtained the permit required by this act, or until the board acknowledges that such structure would not be an obstruction within the meaning of this act.

(3) No action for damages sustained because of injury caused by an obstruction for which a permit has been granted under this act shall be brought against the state, the board, a member of the board, or its employees or agents. No provision of this act shall be construed as interfering in any way with the right of the United States to regulate interstate commerce or the navigable waters of the United States.

**History:** En. Sec. 14, Ch. 393, L. 1971.

**89-3515. Remedies not exclusive.** The use of any one of the remedies or powers given to the board in this act shall not constitute a bar to the exercise of any other remedy or power given by this act.

**History:** En. Sec. 15, Ch. 393, L. 1971.

**Separability Clause**

Section 16 of Ch. 393, Laws 1971 read  
"If any section in this act or any part of

any section is declared invalid or unconstitutional, such declaration of invalidity shall not affect the validity of the remaining portions thereof."



## TITLE 90—WEIGHTS—MEASURES AND GRADES—TIME— MONEY

- Chapter 1. Standard weights and measures—state sealer, 90-153 to 90-194.
2. Apples, grades and boxes, 90-201.
  3. Bread—standard weight and loaf, Repealed—Section 3, Chapter 252, Laws of 1957; Section 24, Chapter 16, Laws of 1965; Section 27, Chapter 307, Laws of 1967.
  6. Packaged commodities offered for sale, 90-621.

### CHAPTER 1—STANDARD WEIGHTS AND MEASURES—STATE SEALER

- Section 90-153. Meaning of terms.
- 90-154. Systems of weights and measures.
  - 90-155. Definitions of special units of measure.
  - 90-156. State standards of weight and measure.
  - 90-157. Field standards and equipment.
  - 90-158. State sealer, chief sealer, and deputy sealers of weights and measures.
  - 90-159. General powers and duties of sealer.
  - 90-160. Specific powers and duties of sealer—regulations.
  - 90-161. Sealer—testing at state-supported institutions.
  - 90-162. Sealer—general testing.
  - 90-163. Sealer—investigations.
  - 90-164. Sealer—inspection of packages.
  - 90-165. Sealer—stop-use, stop-removal, and removal orders.
  - 90-166. Sealer—disposition of correct and incorrect apparatus.
  - 90-167. Sealer—police powers—right of entry and stoppage.
  - 90-168. Powers and duties of chief sealer and deputy sealers.
  - 90-169. Duty of owners of incorrect apparatus.
  - 90-170. Method of sale of commodities—general.
  - 90-171. Method of sale of commodities—packages—declarations of quantity and origin—variations—exemptions.
  - 90-172. Method of sale of commodities—declarations of unit price on random packages.
  - 90-173. Method of sale of commodities—misleading packages.
  - 90-174. Method of sale of commodities—advertising packages for sale.
  - 90-175. Sale by net weight.
  - 90-176. Misrepresentation of price.
  - 90-177. Meat, poultry, and seafood.
  - 90-178. Bread.
  - 90-179. Butter, oleomargarine, and margarine.
  - 90-180. Fluid dairy products.
  - 90-181. Flour, corn meal, and hominy grits.
  - 90-182. Bulk deliveries sold in terms of weight and delivered by vehicle.
  - 90-183. Furnace and stove oil.
  - 90-184. Berries and small fruits.
  - 90-185. Construction of contracts.
  - 90-186. Hindering or obstructing officer—penalties.
  - 90-187. Impersonation of officer—penalties.
  - 90-188. Offenses and penalties.
  - 90-189. Injunction.
  - 90-190. Presumptive evidence.
  - 90-191. Validity of prosecutions.
  - 90-192. Separability provision.
  - 90-193. Repeal of conflicting laws.
  - 90-194. Citation.

90-101 to 90-152. (4212 to 4229, 4230.1, 4232, 4234 to 4238, 4240 to 4264) **Repealed.**

#### Repeal

Sections 90-101 to 90-152 (Secs. 3120 to 3134, 3136, Pol. C. 1895; Sec. 1, p. 137, L. 1901; Sec. 1, Ch. 91, L. 1907; Secs. 1 to 4, 6 to 11, 13 to 16, 18 to 25, 28 to 31, Ch. 34, L. 1911; Secs. 1 to 4, 6 to 13,

15 to 21, Ch. 83, L. 1913; Secs. 1, 2, Ch. 19, L. 1917; Sec. 1, Ch. 74, L. 1921; Secs. 1, 3, Ch. 140, L. 1921; Sec. 2, Ch. 84, L. 1935; Secs. 1, 4 to 31, Ch. 146, L. 1939; Sec. 1, Ch. 27, L. 1941; Secs. 1 to 5, Ch. 110, L. 1945; Sec. 1, Ch. 174, L. 1949; Sec. 1, Ch. 130, L. 1951; Secs. 1 to 6, Ch. 143, L. 1951; Sec. 2, Ch. 158, L. 1953; Sec. 1, Ch. 131, L. 1955; Sec. 1, Ch. 84, L. 1957; Sec. 1, Ch. 90, L. 1957; Sec. 1, Ch. 157, L. 1957; Sec. 1, Ch. 59, L. 1959; Sec. 1, Ch. 78, L. 1959; Sec. 1, Ch. 147, L. 1961; Sec. 44, Ch. 177, L. 1965), relating to standard weights and measures and the state sealer of weights and measures, were repealed by Sec. 24, Ch. 160, Laws 1965 and Sec. 43, Ch. 99, Laws 1969. For present law, see secs. 90-153 to 90-194.

**90-153. Meaning of terms.** When used in this act:

- (1) The word "person" shall be construed to mean both the plural and singular, as the case demands, and shall include individuals, partnerships, corporations, companies, societies and associations.
- (2) The words "weight(s) and (or) measure(s)" shall be construed to mean all weights and measures of every kind, instruments and devices for weighing and measuring, and any appliances and accessories associated with any or all such instruments and devices, except that the term shall not be construed to include meters for the measurement of electricity, gas (natural or manufactured), or water when the same are operated in a public utility system. Such electricity, gas, and water meters are hereby specifically excluded from the purview of this act, and none of the provisions of this act shall be construed to apply to such meters or to any appliances or accessories associated therewith.
- (3) The words "sell" and "sale" shall be construed to mean barter and exchange.
- (4) The term "sealer" shall be construed to mean the state sealer of weights and measures.
- (5) The terms "chief sealer" and "deputy sealer" shall be construed to mean, respectively, the state chief sealer of weights and measures and the deputy sealer of weights and measures.
- (6) The term "intrastate commerce" shall be construed to mean any and all commerce or trade that is begun, carried on, and completed wholly within the limits of the state of Montana, and the phrase "introduced into intrastate commerce" shall be construed to define the time and place at which the first sale and delivery of a commodity is made within the state, the delivery being made either directly to the purchaser or to a common carrier for shipment to the purchaser.
- (7) The term "commodity in package form" shall be construed to mean commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale, exclusive, however, of any auxiliary shipping container enclosing packages that individually conform to the requirements of this act. An individual item or lot of any commodity not in package form as defined in this section, but on which there is marked a selling price based on an established price per unit of weight or of measure, shall be construed to be commodity in package form.
- (8) A "consumer package" or "package of consumer commodity" shall be construed to mean a commodity in package form that is cus-

tomarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals or use by individuals for the purposes of personal care or in the performance of services ordinarily rendered in or about the household or in connection with personal possessions.

(9) A "nonconsumer package" or "package of nonconsumer commodity" shall be construed to mean any commodity in package form other than a consumer package, and particularly a package designed solely for industrial or institutional use or for wholesale distribution only.

**History:** En. Sec. 1, Ch. 99, L. 1969.

**Title of Act**

An act relating to weights and measures, providing for a state sealer of weights and measures, providing for a system of weights and measures, regulating the sale of commodities by weight and measure,

providing for enforcement: repealing sections 90-101 through 90-119, 90-120 through 90-129, 90-131, 90-133 through 90-143, 90-145 through 90-152, 90-601 through 90-620, 3-202, 3-2432, 3-2433, 11-958, 50-603, 50-408, 50-409, R. C. M., 1947, 11

**90-154. Systems of weights and measures.** The system of weights and measures in customary use in the United States and the metric system of weights and measures are jointly recognized, and either one or both of these systems shall be used for all commercial purposes in the state of Montana. The definitions of basic units of weight and measure, the tables of weight and measure, and weights and measures equivalents as published by the national bureau of standards are recognized and shall govern weighing and measuring equipment and transactions in the state.

**History:** En. Sec. 2, Ch. 99, L. 1969.

**90-155. Definitions of special units of measure.** The term "barrel" when used in connection with fermented liquor shall mean a unit of thirty-one (31) gallons. The term "ton" shall mean a unit of two thousand (2,000) pounds avoirdupois weight. The term "cord" when used in connection with wood intended for fuel purposes shall mean the amount of wood that is contained in a space of one hundred twenty-eight (128) cubic feet when the wood is ranked and well stowed.

**History:** En. Sec. 3, Ch. 99, L. 1969.

**90-156. State standards of weight and measure.** Such weights and measures in conformity with the standards of the United States as have been supplied to the state by the federal government or otherwise obtained by Montana for use as state standards shall, when the same shall have been certified as being satisfactory for use as such by the national bureau of standards, be the state standards of weight and measure. The state standards shall be kept in a safe and suitable place in the office or laboratory of the state division of weights and measures, they shall not be removed from the said office or laboratory except for repairs or for certification, and they shall be submitted at least once in ten years to the national bureau of standards for certification.

**History:** En. Sec. 4, Ch. 99, L. 1969.



**90-157. Field standards and equipment.** In addition to the state standards provided for in section 4 [90-156] of this act, there shall be supplied by the state such "field standards" and such equipment as may be found necessary to carry out the provisions of this act. The field standards shall be verified upon their initial receipt and at least once each year thereafter by comparison with the state standards.

**History:** En. Sec. 5, Ch. 99, L. 1969.

**90-158. State sealer, chief sealer, and deputy sealers of weights and measures.** There shall be a state sealer of weights and measures. The commissioner of agriculture shall be, ex officio, the state sealer. There shall be a chief sealer of weights and measures and deputy sealers of weights and measures, and necessary technical and clerical personnel, who shall be appointed by the sealer, and who shall hold office during good behavior, and who shall collectively comprise the state division of weights and measures, of which the chief sealer shall be the head.

**History:** En. Sec. 6, Ch. 99, L. 1969.

**Cross-References**

Sealer's position abolished and functions transferred, sec. 82A-402(3).

**90-159. General powers and duties of sealer.** The sealer shall have the custody of the state standards of weight and measure and of the other standards and equipment provided for by this act, and shall keep accurate records of the same. The sealer shall enforce the provisions of this act. He shall have and keep a general supervision over the weights and measures offered for sale, sold, or in use in the state.

**History:** En. Sec. 7, Ch. 99, L. 1969.

**Cross-References**

Functions transferred to department of business regulation, sec. 82A-403(4).

**90-160. Specific powers and duties of sealer — regulations.** The sealer shall issue from time to time reasonable regulations for the enforcement of this act, which regulations shall have the force and effect of law. These regulations may include (1) schedules of fees for testing and certification, (2) standards of net weight, measure, or count, and reasonable standards of fill for any commodity in package form, (3) rules governing the technical and reporting procedures to be followed and the report and record forms and marks of approval and rejection to be used by sealers of weights and measures in the discharge of their official duties, (4) exemptions from the sealing or marking requirements of section 14 [90-166] of this act with respect to weights and measures of such character or size that such sealing or marking would be inappropriate, impracticable, or damaging to the apparatus in question, and (5) rules governing the voluntary registration of servicemen and service agencies. These regulations shall include specifications, tolerances, and other technical requirements for weights and measures of the character of those specified in section 10 [90-162] of this act, designed to eliminate from use, without prejudice to apparatus that conforms as closely as practicable to the official standards, those (1) that are not accurate, (2) that are of such construction that they are faulty (that is, that

are not reasonably permanent in their adjustment or will not repeat their indications correctly), or (3) that facilitate the perpetration of fraud. The specifications, tolerances, and other technical requirements for commercial weighing and measuring devices, together with amendments thereto, as recommended by the national bureau of standards and published in national bureau of standards handbook 44 and supplements thereto, or in any publication revising or superseding handbook 44, shall be the specifications, tolerances, and other technical requirements for commercial weighing and measuring devices of the state of Montana, except in so far as specifically modified, amended, or rejected by a regulation issued by the sealer. For the purposes of this act, apparatus shall be deemed to be "correct" when it conforms to all applicable requirements promulgated as specified in this section. Other apparatus shall be deemed to be "incorrect."

**History:** En. Sec. 8, Ch. 99, L. 1969.

**90-161. Sealer—testing at state-supported institutions.** The sealer shall from time to time test all weights and measures used in checking the receipt or disbursement of supplies in every institution for the maintenance of which moneys are appropriated by the legislature, reporting his findings, in writing, to the supervisory board and to the executive officer of the institution concerned.

**History:** En. Sec. 9, Ch. 99, L. 1969.

**90-162. Sealer—general testing.** When not otherwise provided by law, the sealer shall have the power to inspect and test, to ascertain if they are correct, all weights and measures kept, offered, or exposed for sale. It shall be the duty of the sealer, within a twelve-month period, or less frequently if in accordance with a schedule issued by him, and as much oftener as he may deem necessary, to inspect and test, to ascertain if they are correct, all weights and measures commercially used (1) in determining the weight, measurement, or count of commodities or things sold, or offered or exposed for sale, on the basis of weight, measure, or of count, or (2) in computing the basic charge or payment for services rendered on the basis of weight, measure, or of count: Provided, that with respect to single-service devices (that is, devices designed to be used commercially only once and to be then discarded) and with respect to devices uniformly mass-produced, as by means of a mold or die, and not susceptible of individual adjustment, tests may be made on representative samples of such devices; and the lots of which such samples are representative shall be held to be correct or incorrect upon the basis of the results of the inspections and tests on such samples: And provided further, that any itinerant peddler or hawker, using weights and measures, shall register his name and address with the chief sealer of weights and measures, in order that his equipment can be tested in accordance with the provisions of this law.

**History:** En. Sec. 10, Ch. 99, L. 1969.

**90-163. Sealer—investigations.** The sealer shall investigate complaints made to him concerning violations of the provisions of this act,

and shall, upon his own initiative, conduct such investigations as he deems appropriate and advisable to develop information on prevailing procedures in commercial quantity determination and on possible violations of the provisions of this act and to promote the general objective of accuracy in the determination and representation of quantity in commercial transactions.

**History:** En. Sec. 11, Ch. 99, L. 1969.

**90-164. Sealer—inspection of packages.** The sealer shall, from time to time, weigh or measure and inspect packages or amounts of commodities kept, offered, or exposed for sale, sold, or in the process of delivery, to determine whether the same contain the amounts represented and whether they be kept, offered, or exposed for sale or sold in accordance with law. When such packages or amounts of commodities are found not to contain the amounts represented, or are found to be kept, offered, or exposed for sale in violation of law, the sealer may order them off sale and may so mark or tag them as to show them to be illegal. In carrying out the provisions of this section, the sealer may employ recognized sampling procedures under which the compliance of a given lot of packages will be determined on the basis of the result obtained on a sample selected from and representative of such lot. No person shall (1) sell, or keep, offer, or expose for sale, in intrastate commerce, any package or amount of commodity that has been ordered off sale or marked or tagged as provided in this section unless and until such package or amount of commodity has been brought into full compliance with all legal requirements, or (2) dispose of any package or amount of commodity that has been ordered off sale or marked or tagged as provided in this section and that has not been brought into compliance with legal requirements, in any manner, except with the specific approval of the sealer.

**History:** En. Sec. 12, Ch. 99, L. 1969.

**90-165. Sealer—stop-use, stop-removal, and removal orders.** The sealer shall have the power to issue stop-use orders, stop-removal orders, and removal orders with respect to weights and measures being, or susceptible of being, commercially used, and to issue stop-removal orders and removal orders with respect to packages or amounts or commodities kept, offered, or exposed for sale, sold, or in process of delivery, whenever in the course of his enforcement of the provisions of this act he deems it necessary or expedient to issue such orders, and no person shall use, remove from the premises specified, or fail to remove from the premises specified, any weight, measure, or package or amount of commodity contrary to the terms of a stop-use order, stop-removal order, or removal order issued under the authority of this section.

**History:** En. Sec. 13, Ch. 99, L. 1969.

**90-166. Sealer—disposition of correct and incorrect apparatus.** The sealer shall approve for use, and seal or mark with appropriate devices, such weights and measures as he finds upon inspection and test to be



"correct" as defined in section 8 [90-160] of this act, and shall reject and mark or tag as "rejected" such weights and measures as he finds, upon inspection or test, to be "incorrect" as defined in section 8 [90-160] of this act, but which in his best judgment are susceptible of satisfactory repair: Provided, that, such sealing or marking shall not be required with respect to such weights and measures as may be exempted therefrom by a regulation of the sealer issued under the authority of section 8 [90-160] of this act. The sealer shall condemn, and may seize and destroy, weights and measures found to be incorrect that, in his best judgment, are not susceptible of satisfactory repair. Weights and measures that have been rejected may be confiscated and may be destroyed by the sealer if not corrected as required by section 17 [90-169] of this act, or if used or disposed of contrary to the requirements of section 17 [90-169] of this act.

History: En. Sec. 14, Ch. 99, L. 1969.

**90-167. Sealer—police powers—right of entry and stoppage.** With respect to the enforcement of this act and any other acts dealing with weights and measures that he is or may be empowered to enforce, the sealer is hereby vested with special police powers, and is authorized to arrest, without formal warrant, any violator of the said acts, and to seize for use as evidence, without formal warrant, incorrect or unsealed weights and measures or amounts of packages of commodity found to be used, retained, offered, or exposed for sale or sold in violation of law. In the performance of his official duties, the sealer is authorized to enter and go into or upon, without formal warrant, any structure or premises, and to stop any person whatsoever and to require him to proceed, with or without any vehicle of which he may be in charge, to some place which the sealer may specify.

History: En. Sec. 15, Ch. 99, L. 1969.

**90-168. Powers and duties of chief sealer and deputy sealers.** The powers and duties, given to and imposed upon the sealer by sections 9, 10, 11, 12, 13, 14, 15, and 37 [90-161, 90-162, 90-163, 90-164, 90-165, 90-166, 90-167, and 90-189] of this act are hereby given to and imposed upon the chief sealer and deputy sealers also when acting under the instructions and at the direction of the state sealer.

History: En. Sec. 16, Ch. 99, L. 1969.

**90-169. Duty of owners of incorrect apparatus.** Weights and measures that have been rejected under the authority of the sealer or of a deputy sealer shall remain subject to the control of the rejecting authority until such time as suitable repair or disposition thereof has been made as required by this section. The owners of such rejected weights and measures shall cause the same to be made correct within thirty (30) days or such longer period as may be authorized by the rejecting authority; or, in lieu of this, may dispose of the same, but only in such manner as is specifically authorized by the rejecting authority. Weights and measures that have been rejected shall not again be used com-

mercially until they have been officially re-examined and found to be correct, or until specific written permission for such use is issued by the rejecting authority, or until the rejection tag has been removed and the rejected device repaired and placed in service by a person duly registered to perform such acts under a regulation issued by the sealer for the registration of weights and measures servicemen and service agencies.

**History:** En. Sec. 17, Ch. 99, L. 1969.

**90-170. Method of sale of commodities—general.** Commodities in liquid form shall be sold only [by] liquid measure or by weight, and, except as otherwise provided in this act, commodities not in liquid form shall be sold only by weight, by measure of length or area, or by count: Provided, that liquid commodities may be sold by weight and commodities not in liquid form may be sold by count only if such methods give accurate information as to the quantity of commodity sold: And provided further, that the provisions of this section shall not apply (1) to commodities when sold for immediate consumption on the premises where sold, (2) to vegetables when sold by the head or bunch, (3) to commodities in containers standardized by a law of this state or by federal law, (4) to commodities in package form when there exists a general consumer usage to express the quantity in some other manner, (5) to concrete aggregates, concrete mixtures, and loose solid materials such as earth, soil, gravel, crushed stone, and the like, when sold by cubic measure, or (6) to unprocessed vegetable and animal fertilizer when sold by cubic measure. The sealer may issue such reasonable regulations as are necessary to assure that amounts of commodity sold are determined in accordance with good commercial practice and are so determined and represented as to be accurate and informative to all parties at interest.

**History:** En. Sec. 18, Ch. 99, L. 1969.

**Compiler's Notes**

The compiler has inserted the bracketed word "by" in the first sentence.

**90-171. Method of sale of commodities—packages—declarations of quantity and origin—variations—exemptions.** Except as otherwise provided in this act, any commodity in package form introduced or delivered for introduction into or received in intrastate commerce, kept for the purpose of sale, or offered or exposed for sale in intrastate commerce, shall bear on the outside of the package such definite, plain, and conspicuous declarations of (1) the identity of the commodity in the package unless the same can easily be identified through the wrapper or container, (2) the net quantity of the contents in terms of weight, measure, or count, and (3) in the case of any package kept, offered, or exposed for sale, or sold in any place other than on the premises where packed, the name and place of business of the manufacturer, packer, or distributor, as may be prescribed by regulation issued by the director: provided, that, in connection with the declaration required under clause (2), neither the qualifying term "when packed" or any words of similar import, nor any term qualifying a unit of weight, measure, or count (for

example, "jumbo," "giant," "full," and the like) that tends to exaggerate the amount of commodity in a package shall be used: And provided further, that under clause (2) the sealer shall, by regulation, establish (a) reasonable variations to be allowed, which may include variations below the declared weight or measure caused by ordinary and customary exposure, only after the commodity is introduced into intrastate commerce, to conditions that normally occur in good distribution practice and that unavoidably result in decreased weight or measure, (b) exemptions as to small packages, and (c) exemptions as to commodities put up in variable weights or sizes for sale intact and either customarily not sold as individual units or customarily weighed or measured at time of sale to the consumer.

**History:** En. Sec. 19, Ch. 99, L. 1969.

**90-172. Method of sale of commodities—declarations of unit price on random packages.** In addition to the declarations required by section 19 [90-171] of this act, any commodity in package form, the package being one of a lot containing random weights, measures, or counts of the same commodity and bearing the total selling price of the package, shall bear on the outside of the package a plain and conspicuous declaration of the price per single unit of weight, measure, or count.

**History:** En. Sec. 20, Ch. 99, L. 1969.

**90-173. Method of sale of commodities—misleading packages.** No commodity in package form shall be so wrapped, nor shall it be in a container so made, formed, or filled as to mislead the purchaser as to the quantity of the contents of the package, and the contents of a container shall not fall below such reasonable standard of fill as may have been prescribed for the commodity in question by the sealer.

**History:** En. Sec. 21, Ch. 99, L. 1969.

**90-174. Method of sale of commodities—advertising packages for sale.** Whenever a commodity in package form is advertised in any manner and the retail price of the package is stated in the advertisement, there shall be closely and conspicuously associated with such statement of price a declaration of the basic quantity of contents of the package as is required by law or regulation to appear on the package: provided, that, where the law or regulation requires a dual declaration of net quantity to appear on the package, only the declaration that sets forth the quantity in terms of the smaller unit of weight or measure (the declaration that is required to appear first and without parenthesis on the package) need appear in the advertisement: And provided further, that there shall not be included as part of the declaration required under this section such qualifying terms as "when packed," "minimum," "not less than," or any other terms of similar import, nor any term qualifying a unit of weight, measure, or count (for example, "jumbo," "giant," "full," and the like) that tends to exaggerate the amount of commodity in the package.

**History:** En. Sec. 22, Ch. 99, L. 1969.



**90-175. Sale by net weight.** The word "weight" as used in this act in connection with any commodity shall mean net weight. Whenever any commodity is sold on the basis of weight, the net weight of the commodity shall be employed, and all contracts concerning commodities shall be so construed.

**History:** En. Sec. 23, Ch. 99, L. 1969.

**90-176. Misrepresentation of price.** Whenever any commodity or service is sold, or is offered, exposed, or advertised for sale, by weight, measure, or count, the price shall not be misrepresented, nor shall the price be represented in any manner calculated or tending to mislead or deceive an actual or prospective purchaser. Whenever an advertised, posted, or labeled price per unit of weight, measure, or count includes a fraction of a cent, all elements of the fraction shall be prominently displayed and the numeral or numerals expressing the fraction shall be immediately adjacent to, of the same general design and style as, and at last one-half ( $\frac{1}{2}$ ) the height and width of the numerals representing the whole cents.

**History:** En. Sec. 24, Ch. 99, L. 1969.

**90-177. Meat, poultry, and seafood.** Except for immediate consumption on the premises where sold, or as one of several elements comprising a ready-to-eat meal sold as a unit for consumption elsewhere than on the premises where sold, all meat, meat products, poultry (whole or parts), and all seafood except shellfish, offered or exposed for sale or sold as food shall be offered or exposed for sale and sold by weight. When meat, poultry, or seafood is combined with or associated with some other food element or elements to form either a distinctive food product or a food combination, such food product or combination shall be offered or exposed for sale and sold by weight, and the quantity representation may be the total weight of the product or combination, and a quantity representation need not be made for each of the several elements of the product or combination.

**History:** En. Sec. 25, Ch. 99, L. 1969.

**90-178. Bread.** Each loaf of bread and each unit of a twin or multiple loaf of bread [manufactured] or procured for sale, kept, offered, exposed for sale, or sold, whether or not the bread is wrapped or sliced, shall weigh one-half ( $\frac{1}{2}$ ) pound, one (1) pound, one and one-half ( $1\frac{1}{2}$ ) pounds, or a multiple of one (1) pound, avoirdupois weight, within reasonable variations or tolerances that shall be promulgated by regulation by the sealer: provided, that the provisions of this section shall not apply to biscuits, buns, or rolls weighing eight (8) ounces or less, or to "stale bread" sold and expressly represented at the time of sale as such, and that the marking provisions of section 19 [90-171] shall not apply to unwrapped loaves of bread.

**History:** En. Sec. 26, Ch. 99, L. 1969.

#### **Compiler's Notes**

The compiler has inserted the bracketed word "manufactured" near the beginning of the section.

**90-179. Butter, oleomargarine, and margarine.** Butter, oleomargarine, and margarine shall be offered and exposed for sale and sold by weight, and only in units of one-fourth ( $\frac{1}{4}$ ) pound, one-half ( $\frac{1}{2}$ ) pound, one (1) pound, or multiples of one (1) pound, avoirdupois weight.

History: En. Sec. 27, Ch. 99, L. 1969.

**90-180. Fluid dairy products.** All fluid dairy products, including but not limited to whole milk, skimmed milk, cultured milk, sweet cream, sour cream, and buttermilk, shall be packaged for retail sale only in units of one (1) gill, one-half ( $\frac{1}{2}$ ) liquid pint, ten (10) fluid ounces, one (1) liquid pint, one (1) liquid quart, one-half ( $\frac{1}{2}$ ) gallon, one (1) gallon, one and one-half ( $1\frac{1}{2}$ ) gallons, two (2) gallons, two and one-half ( $2\frac{1}{2}$ ) gallons, or multiples of one (1) gallon: provided, that packages in units of less than one (1) gill shall be permitted.

History: En. Sec. 28, Ch. 99, L. 1969.

**90-181. Flour, corn meal, and hominy grits.** When in package form, and when packed, kept, offered, or exposed for sale or sold, wheat flour, whole wheat flour, graham flour, self-rising wheat flour, phosphated wheat flour, bromated flour, enriched flour, enriched self-rising flour, enriched bromated flour, corn flour, corn meal, and hominy grits shall be packaged only in units of two (2), five (5), ten (10), twenty-five (25), fifty (50), or one hundred (100) pounds, avoirdupois weight: provided, that packages in units of less than two (2) pounds or more than one hundred (100) pounds shall be permitted.

History: En. Sec. 29, Ch. 99, L. 1969.

**90-182. Bulk deliveries sold in terms of weight and delivered by vehicle.** When a vehicle delivers to an individual purchaser a commodity in bulk, and the commodity is sold in terms of weight units, the delivery shall be accompanied by a duplicate delivery ticket with the following information clearly stated, in ink or by means of other indelible marking equipment and, in clarity, equal to type or printing, (1) the name and address of the vendor, (2) the name and address of the purchaser, and (3) the net weight of the delivery expressed in pounds, and, if the net weight is derived from determinations of gross and tare weights, such gross and tare weights also shall be stated in terms of pounds. One of these tickets shall be retained by the vendor, and the other shall be delivered to the purchaser at the time of delivery of the commodity, or shall be surrendered, on demand, to the sealer, or the chief sealer or deputy sealer, who, if he desires to retain it as evidence, shall issue a weight slip in lieu thereof for delivery to the purchaser: provided, that, if the purchaser, himself, carries away his purchase, the vendor shall be required only to give to the purchaser at the time of sale a delivery ticket stating the number of pounds of commodity delivered to him.

History: En. Sec. 30, Ch. 99, L. 1969.

**90-183. Furnace and stove oil.** All furnace and stove oil shall be sold by liquid measure or by net weight in accordance with the provi-

sions of section 18 [90-170] of this act. In the case of each delivery of such liquid fuel not in package form and in an amount greater than ten (10) gallons in the case of sale by liquid measure or one hundred (100) pounds in the case of sale by weight, there shall be rendered to the purchaser, either (a) at the time of delivery or (b) within a period mutually agreed upon in writing or otherwise between the vendor and the purchaser, a delivery ticket or a written statement on which, in ink or by means of other indelible marking equipment and, in clarity, equal to type or printing, there shall be clearly stated (1) the name and address of the vendor, (2) the name and address of the purchaser, (3) the identity of the type of fuel comprising the delivery, (4) the unit price (that is, the price per gallon or per pound, as the case may be) of the fuel delivered, (5) in the case of sale by liquid measure, the liquid volume of the delivery, together with any meter readings from which such liquid volume has been computed, expressed in terms of the gallon and its binary or decimal subdivisions, and (6) in the case of sale by weight, the net weight of the delivery, together with any weighing scale readings from which such net weight has been computed, expressed in terms of tons or pounds avoirdupois.

**History:** En. Sec. 31, Ch. 99, L. 1969.

**90-184. Berries and small fruits.** Berries and small fruits shall be offered and exposed for sale and sold by weight, or by measure in open containers having capacities of one-half ( $\frac{1}{2}$ ) dry pint, one (1) dry pint, or one (1) dry quart: provided, that the marking provisions of section 19 [90-171] of this act shall not apply to such containers.

**History:** En. Sec. 32, Ch. 99, L. 1969.

**90-185. Construction of contracts.** Fractional parts of any unit of weight or measure shall mean like fractional parts of the value of such unit as prescribed or defined in sections 2 and 3 [90-154 and 90-155] of this act, and all contracts concerning the sale of commodities and services shall be construed in accordance with this requirement.

**History:** En. Sec. 33, Ch. 99, L. 1969.

**90-186. Hindering or obstructing officer—penalties.** Any person who shall hinder or obstruct in any way the sealer, the chief sealer, or any one of the deputy sealers, in the performance of his official duties shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty dollars (\$20.00) or more than two hundred dollars (\$200.00), or by imprisonment for not more than three (3) months, or by both such fine and imprisonment.

**History:** En. Sec. 34, Ch. 99, L. 1969.

**90-187. Impersonation of officer—penalties.** Any person who shall impersonate in any way the sealer, the chief sealer, or any one of the deputy sealers, by the use of his seal or a counterfeit of his seal, or in any other manner, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred



dollars (\$100.00) or more than five hundred dollars (\$500.00), or by imprisonment for not more than one (1) year, or by both such fine and imprisonment.

History: En. Sec. 35, Ch. 99, L. 1969.

**90-188. Offenses and penalties.** Any person who, by himself, or by his servant or agent, or as the servant or agent of another person, performs any one of the acts enumerated in subparagraphs (1) through (9) of this section shall be guilty of a misdemeanor and, upon a first conviction thereof, shall be punished by a fine of not less than twenty dollars (\$20.00) or more than two hundred dollars (\$200.00), or by imprisonment for not more than three (3) months, or by both such fine and imprisonment. Upon a second or subsequent conviction thereof, he shall be punished by a fine of not less than fifty dollars (\$50.00) or more than five hundred dollars (\$500.00), or by imprisonment for not more than one (1) year, or by both such fine and imprisonment.

(1) Use or have in possession for the purpose of using for any commercial purpose specified in section 10 [90-162], sell, offer, or expose for sale or hire, or have in possession for the purpose of selling or hiring, an incorrect weight or measure or any device or instrument used to or calculated to falsify any weight or measure.

(2) Use, or have in possession for the purpose of current use for any commercial purpose specified in section 10 [90-162], a weight or measure that does not bear a seal or mark such as is specified in section 14 [90-166], unless such weight or measure has been exempted from testing by the provisions of section 10 [90-162] or by a regulation of the sealer issued under the authority of section 8 [90-160], or unless the device has been placed in service as provided by a regulation of the sealer issued under the authority of section 8 [90-160] of this act: provided, that, any person or persons making use of weighing or measuring devices subject to this act must report to the sealer of weights and measures or his deputies, in writing, the number and location of said weighing or measuring device and must promptly report the installation of any new weighing or measuring device.

(3) Dispose of any rejected or condemned weight or measure in a manner contrary to law or regulation.

(4) Remove from any weight or measure, contrary to law or regulation, any tag, seal, or mark placed thereon by the appropriate authority.

(5) Sell, or offer or expose for sale, less than the quantity he represents of any commodity, thing, or service.

(6) Take more than the quantity he represents of any commodity, thing, or service, when, as buyer, he furnishes the weight or measure by means of which the amount of the commodity, thing, or service is determined.

(7) Keep for the purpose of sale, advertise, or offer or expose for sale, or sell any commodity, thing, or service in a condition or manner contrary to law or regulation.

(8) Use in retail trade, except in the preparation of packages put up in advance of sale and of medical prescriptions, a weight or measure that is not so positioned that its indications may be accurately read and the weighing or measuring operation observed from some position which may reasonably be assumed by a customer.

(9) Violate any provision of this act or of the regulations promulgated under the provisions of this act for which a specific penalty has not been prescribed.

**History:** En. Sec. 36, Ch. 99, L. 1969.

**Conduct Amounting to False Pretenses**

Misdemeanors under former Packaged Commodities Offered for Sale Act and former False Weight and Measures Act were not lesser included offenses of felony of obtaining money by false pretenses since above acts required "sale" while

felony statute does not; state has discretionary power to choose under which law it will charge defendant and the fact that two statutes overlap in prohibiting same act does not mean that the defendant can only be prosecuted under statute providing lesser penalty. *State v. Lagerquist*, 152 M 21, 445 P 2d 910.

**90-189. Injunction.** The sealer is authorized to apply to any court of competent jurisdiction for, and such court upon hearing and for cause shown may grant, a temporary or permanent injunction restraining any person from violating any provision of this act.

**History:** En. Sec. 37, Ch. 99, L. 1969.

**90-190. Presumptive evidence.** For the purposes of this act, proof of the existence of a weight or measure or a weighing or measuring device in or about any building, inclosure, stand, or vehicle in which or from which is shown that buying or selling is commonly carried on, shall, in the absence of conclusive evidence to the contrary, be presumptive proof of the regular use of such weight or measure or weighing or measuring device for commercial purposes and of such use by the person in charge of such building, inclosure, stand, or vehicle.

**History:** En. Sec. 38, Ch. 99, L. 1969.

**90-191. Validity of prosecutions.** Prosecutions for violation of any provision of this act are declared to be valid and proper, notwithstanding the existence of any other valid general or specific act of this state dealing with matters that may be the same as or similar to those covered by this act.

**History:** En. Sec. 39, Ch. 99, L. 1969.

**90-192. Separability provision.** If any provision of this act is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the act and the applicability thereof to other persons and circumstances shall not be affected thereby.

**History:** En. Sec. 40, Ch. 99, L. 1969.

**90-193. Repeal of conflicting laws.** All laws and parts of laws contrary to or inconsistent with the provisions of this act are hereby repealed.

**History:** En. Sec. 41, Ch. 99, L. 1969.

90-194. **Citation.** This act may be cited as the "Weights and Measures Act of Montana."

**History:** En. Sec. 42, Ch. 99, L. 1969.

**Repealing Clause**

Section 43 of Ch. 99, Laws 1969 read  
"Sections 90-101 through 90-119, 90-120

through 90-129, 90-131, 90-133 through 90-143, 90-145 through 90-152, 90-601 through 90-620, 3-202, 3-2432, 3-2433, 11-958, 50-603, 50-408, 50-409, R. C. M., 1947, are repealed."

## CHAPTER 2—APPLES, GRADES AND BOXES

Section 90-201. Grades of apples.

90-201. (4265.1) **Grades of apples.** The standard grades of apples for the state of Montana shall be: "Extra fancy or first grade," "Fancy or second grade," "C," "Combination grade," and "Hail grade," and "Orchard-run grade."

(a) to (f). \* \* \* [Same as parent volume.]

(g) "Orchard-run grade" shall consist of apples of one variety, which are mature, hand-picked, clean, sound, free from infection or disease or serious damage and must have fifteen per centum (15%) color requirements characteristic of the variety and shall be marked in block letters not less than one inch in height on both ends of box "Orchard-run grade."

(h) No apples smaller than two and one-fourth ( $2\frac{1}{4}$ ) inches in diameter shall be permitted in any grade.

Small apples which are under size requirements as prescribed may be shipped if marked "small" in block letters not less than one inch in height on both ends of box, provided such apples are free from insect pests and diseases.

(i) In order to provide for variations incident to commercial grading and handling a tolerance of ten per centum (10%) for a total of all defects from the standard of the grade shall be allowed.

**History:** En. Sec. 1, Ch. 138, L. 1931; amd. Sec. 1, Ch. 1, L. 1933; amd. Sec. 1, Ch. 39, L. 1935; amd. Sec. 1, Ch. 89, L. 1939; amd. Sec. 1, Ch. 43, L. 1951; amd. Sec. 1, Ch. 127, L. 1971.

**Amendments**

The 1971 amendment added "and 'Orchard-run grade'" at the end of the first paragraph; inserted a new subdivision (g); and redesignated former subdivisions (g) and (h) as subdivisions (h) and (i), respectively.

## CHAPTER 3—BREAD—STANDARD WEIGHT AND LOAF

(Repealed—Section 3, Chapter 252, Laws of 1957; Section 24, Chapter 16, Laws of 1965; Section 27, Chapter 307, Laws of 1967)

90-301. (4273) **Repealed.**

**Repeal**

This section (Sec. 1, Ch. 155, L. 1919; Sec. 2, Ch. 252, L. 1957), relating to stand-

ard weights for bread, was repealed by Sec. 24, Ch. 160, Laws 1965. For present law, see sec. 90-178.

90-301.1. **Repealed.**

**Repeal**

This section (Sec. 1, Ch. 252, L. 1957), relating to the manufacture of bakery

products, was repealed by Sec. 27, Ch. 307, Laws 1967.



**90-304. (4276) Repealed.****Repeal**

This section (Sec. 4, Ch. 155, L. 1919), relating to the violation of laws pertain-

ing to the manufacture and sale of bread, was repealed by Sec. 27, Ch. 307, Laws 1967.

**CHAPTER 6—PACKAGED COMMODITIES OFFERED FOR SALE****Section 90-621. Supplement clause.****90-601 to 90-620. Repealed.****Repeal**

Sections 90-601 to 90-620 (Secs. 1 to 20, Ch. 160, L. 1965), relating to packaged commodities offered for sale, were

repealed by Sec. 43, Ch. 99, Laws 1969. For present law, see secs. 90-153, 90-163 to 90-165, 90-167, 90-170 to 90-178, 90-184 to 90-186, 90-188 and 90-189.

**90-621. Supplement clause.** This act is intended to be supplementary, and is not intended to repeal sections 90-140 and 90-141, R. C. M. 1947, or any other law relating to weights and measures.

**History:** En. Sec. 23, Ch. 160, L. 1965.

**Repealing Clause****Compiler's Notes**

Sections 90-140 and 90-141, referred to in this section, were repealed by Sec. 43, Ch. 99, Laws 1969.

Section 24 of Ch. 160, Laws 1965 read "Repealing section. Sections 90-130, 90-132, 90-144 and 90-301, R. C. M. 1947, are repealed."







# REVISED CODES OF MONTANA

**VOLUME 6**

**Part 2**

**1971 Cumulative Pocket Supplement**

*Containing*

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE  
LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF  
REPLACEMENT VOLUME 6 (PART 2) OF  
THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 6  
(PART 2) THROUGH VOLUME 478, PACIFIC  
REPORTER (2ND SERIES)

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MONTANA

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#### 91-103. (6976) Will, or part thereof, procured by fraud.

##### Undue Influence

Substantial evidence of undue influence was shown where beneficiary under a second will was never close to the testator until learning of his bank account, and importuned upon him, while in a weakened condition, so that the testator rejected his friends. In re Maricich's Estate, 145 M 146, 400 P 2d 873.

The contestant has the burden of showing undue influence. In re Maricich's Estate, 145 M 146, 400 P 2d 873.

In considering undue influence, the court may take into account confidential relationship of person attempting to influence testator, his physical and mental condition as it affects his ability to withstand influence, the unnaturalness of the disposition, and the demands made upon the testator in light of the circumstances. In re Maricich's Estate, 145 M 146, 400 P 2d 873.

91-105. (6978) State institutions which may take by gift, bequest or grant. The state of Montana, units of the university of Montana, the state school for the deaf and blind, all institutions in the department of institutions, and any and all institutions now created or established, or which may hereafter be created or established, and supported in whole or in part by the state of Montana for any purpose, are hereby empowered

and given the right to accept, receive, take, hold, own, and possess gifts, donations, grants, devises, or bequests of real or personal property from any source whatsoever; and said gifts, donations, grants, bequests, or devises may be made direct to the state of Montana, or in the name of any of said institutions, or to any officer or board of said institutions, or to any person in trust for said institutions; but in the event the same shall be made direct to any such institution, or to any officer or board of any such institution, such gift, donation, grant, devise, or bequest shall be construed as a gift, donation, grant, devise, or bequest to the state of Montana, and shall be administered and used by the state of Montana for the particular purpose for which the same was given, donated, granted, bequeathed, or devised; and in the event no particular purpose is mentioned in such gift grant, devise, or bequest, then the same shall be used for the general support, maintenance or improvement of such institution by the state of Montana.

**History:** En. Sec. 1, Ch. 17, L. 1913; re-en. Sec. 6978, R. C. M. 1921; amd. Sec. 96, Ch. 199, L. 1965.

#### **Amendment**

The 1965 amendment inserted "units of" before "the university of Montana"; deleted "the state normal college, the state orphans' home" after "university of Mon-

tana"; and substituted "all institutions in the department of institutions" for "the state school of mines, the state reform school, the soldiers' home, the Montana state tuberculosis sanitarium, the state asylum for the insane, the state penitentiary" after "school for the deaf and blind."

**91-106. (6979) Persons who may make gifts to state institution.** A donation, gift, grant, bequest, devise, or testamentary disposition of property, real or personal, may be made by any person over the age of eighteen years, of sound mind, to the state of Montana, a unit of the university of Montana, the state school for deaf and blind, an institution in the department of institutions, and any and all institutions now created or established, or which may hereafter be created or established and supported, in whole or in part, by the state of Montana for any purpose. And any person, corporation, or association of persons may make any gift, donation, or grant of property, real or personal, to the state of Montana, or to any of the institutions above-named or referred to; but in the event any gift, donation, grant, devise, or bequest shall be made to any such institution, or to any officer or board of any such institution, the same shall be construed as a gift, donation, grant, devise, or bequest to the state of Montana, and shall be administered and used for the state of Montana for the particular purpose for which the same was given, donated, granted, bequeathed, or devised; and in the event no particular purpose is mentioned in such gift, grant, devise, or bequest, then the same shall be used for the general support, maintenance, or improvement of such institution by the state of Montana.

**History:** En. Sec. 2, Ch. 17, L. 1913; re-en. Sec. 6979, R. C. M. 1921; amd. Sec. 97, Ch. 199, L. 1965.

#### **Amendment**

The 1965 amendment inserted "a unit of" before the university of Montana; deleted "the state normal college, the state

orphans' home" after "university of Montana"; and substituted "an institution in the department of institutions" for "the state school of mines, the state reform school, the soldiers' home, the state asylum for the insane, the state penitentiary" after "school for deaf and blind."



**91-136. (7009) Children or issue of children of testator, etc.**

**References**

In re Jones' Estate, 146 M 439, 408 P 2d 482.

**CHAPTER 2—WILLS—INTERPRETATION**

**91-202. (7017) Intention to be ascertained from will.**

**Division of Residue**

Holographic will making specific bequests to various persons' children and directing that any residue be divided by percentage "to all of them more or less" was construed to bequeath specific sums

to children as classes rather than individually but with children to participate equally as individuals in residue. In re Estate of Jensen, 152 M 495, 452 P 2d 418.

**91-205. (7020) Harmonizing various parts.**

**Intention of Testator**

Holographic will making specific bequests to various persons' children and directing that any residue be divided by percentage "to all of them more or less" was construed to bequeath specific sums to children as classes rather than individually but with children to participate equally as individuals in residue. In re

Estate of Jensen, 152 M 495, 452 P 2d 418.

Where sole purpose and object of trust was payment of income for life to testator's wife, mother, sister and son, and such obligations were either fulfilled or no longer possible of fulfillment, trial court properly terminated trust. Testamentary Trust of Child, 153 M 349, 457 P 2d 447.

**91-209. (7024) Words to receive an operative construction.**

**Ambiguous Phrase**

Holographic will making specific bequests to various persons' children and directing that any residue be divided by percentage "to all of them more or less" was construed to bequeath specific sums to children as classes rather than individ-

ually but with children to participate equally as individuals in residue. In re Estate of Jensen, 152 M 495, 452 P 2d 418.

**References**

In re Jones' Estate, 146 M 439, 408 P 2d 482.

**91-210. (7025) Intestacy to be avoided.**

**References**

In re Jones' Estate, 146 M 439, 408 P 2d 482.

**CHAPTER 4—SUCCESSION**

Section 91-403. Succession to and distribution of estates.

**91-403. (7073) Succession to and distribution of estates.** When any person having title to any estate not limited by marriage contract dies without disposing of the estate by will, it is succeeded to and must be distributed, unless otherwise expressly provided by the laws of Montana, subject to the payment of his debts, in the following manner:

1. If the decedent leaves a surviving husband or wife, only one (1) child, or the lawful issue of one (1) child, in equal shares to the surviving husband, or wife and child, or issue of such child. If the decedent leaves

a surviving husband or wife, and more than one (1) child living, or one (1) child living, and the lawful issue of one (1) or more deceased children, one-third ( $\frac{1}{3}$ ) to the surviving husband or wife, and the remainder in equal shares to his children, and to the lawful issue of any deceased child, by right of representation; but if there be no child of the decedent living at his death, the remainder goes to all his lineal descendants; and if all the descendants are in the same degree of kindred to the decedent, they share equally, otherwise they take according to the right of representation. If the decedent leaves no surviving husband or wife, but leaves issue, the whole estate goes to such issue; and if such issue consists of more than one (1) child living, or one (1) child living, and the lawful issue of one (1) or more deceased children, then the estate goes in equal shares to the children living, or to the child living, and the issue of the deceased child or children by right of representation.

2. \* \* \* [Same as parent volume.]

3. If there be neither issue, husband, wife, father, nor mother, then in equal shares to the brothers and sisters of the decedent, and to the children or grandchildren of any deceased brother or sister, by right of representation.

4. to 7. \* \* \* [Same as parent volume.]

History: Ap. p. Sec. 252, p. 361, Cod. Stat. 1871; amd. Sec. 534, p. 364, L. 1877; re-en. Sec. 534, 2nd Div. Rev. Stat. 1879; re-en. Sec. 534, 2nd Div. Comp. Stat. 1887; amd. Sec. 1852, Civ. C. 1895; re-en. Sec. 4820, Rev. C. 1907, Subd. 8; En. Sec. 535, p. 366, L. 1877; amd. Sec. 1, p. 48, L. 1879; re-en. Sec. 535, 2nd Div. Rev. Stat. 1879; re-en. Sec. 535, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1852, Civ. C. 1895; re-en. Sec. 4820, Rev. C. 1907; re-en. Sec. 7073, R. C. M. 1921; amd. Sec. 1, Ch. 140, L. 1941; amd. Sec. 1, Ch. 60, L. 1947; amd. Sec. 1, Ch. 217, L. 1971. Cal. Civ. C. Sec. 1386.

#### Compilers's Notes

The case of *Brundy v. Canby*, 50 M 454, 148 P 315, annotated under this section in the parent volume, was decided

in 1915, before the 1941 amendment of this section. The reasons for the decision would no longer apply under the present version of the statute. See the first sentence, subdivision 2 of this section.

#### Amendments

The 1971 amendment inserted "or grandchildren" in subdivision 3 and made a minor change in phraseology.

#### Surviving Parent

Where decedent left no surviving wife nor children and his father was dead, his mother would be the sole beneficiary of his estate under this section. *Cowan v. Pacific Gamble Robinson Co.*, 232 F Supp 403, 405.

## CHAPTER 5—ESCHEATED ESTATES—INHERITANCE BY NONRESIDENT ALIENS—DISPOSAL OF UNCLAIMED PROPERTY

- Section 91-502. Title to escheated property vests in state—when.  
 91-504. Investment and disposition of money and property.  
 91-505. Unsold personal property, how disposed of—auction sale.  
 91-506. Unsold real property, how disposed of—auction sale.  
 91-507. Unclaimed personal property in hands of agent—disposal.  
 91-508. Sales by state board of equalization, how conducted.  
 91-512. Duty of attorney general—employment of special assistant.  
 91-523. Disposition of money.

91-502. Title to escheated property vests in state—when. Whenever the title to any property, either real or personal, or mixed, fails for any

reason including want of heirs or next of kin, such title shall vest in the state of Montana immediately upon the death of the owner without an inquest or other proceeding in the nature of office found, and there shall be no presumption that such owner died leaving heirs or next of kin; provided that in relation to property other than estates, title shall be presumed to have failed whenever the owner, beneficial owner, or person entitled to any such property within this state has been or shall be and remain unknown for a period of twenty (20) successive years, and during such period whenever the whereabouts of such owner, beneficial owner or persons has been or shall be and remain unknown, and during such period whenever any personal property wherever situated has been or shall be and remain unclaimed, then, in such event, such personal property shall escheat to the state.

All sums escheated under the provisions of the Escheated Property Act shall be delivered by the state board of equalization to the state treasurer and deposited by the treasurer in the agency fund; in connection with the recovery of money or property from escheats other than those from estates, the state board of equalization is hereby authorized and directed to deduct the costs incurred in reducing such moneys or property to the possession of the state of Montana, which sum shall not exceed five per centum (5%) of the amount so recovered, except for such other costs and fees as the judgment of escheat shall so direct.

Moneys and properties placed in the agency fund shall be held in trust for a period of ten (10) years prior to deposit in the public school subfund in the trust and legacy fund by the state treasurer; such ten (10) year period being a time within which the owner, beneficial owner, or any person having a right, title, or interest in the property or money escheated may make claim by the institution of an action for the dissolution of the trust in an amount equal to the full amount or value of the property escheated minus the costs and expenses incident to reducing the same to the possession of the state.

In order to ascertain if any person has knowledge of or is in possession of any escheatable property, it shall be lawful for the attorney general or his assistant to obtain discovery on motion in the district court requiring any such person or persons to divulge any information they may have concerning the possession or location of any property subject to escheat, or any other information pertinent to the recovery of such property by the state of Montana or which information may lead to the discovery of such escheatable property.

**History:** En. Sec. 2, Ch. 184, L. 1943; amd. Sec. 1, Ch. 170, L. 1953; amd. Sec. 110, Ch. 147, L. 1963; amd. Sec. 1, Ch. 156, L. 1971.

#### **Amendments**

The 1971 amendment inserted "deliv-

ered by the state board of equalization to the state treasurer and" in the first part of the second paragraph; and substituted "the state board of equalization" for "the state treasurer" in the latter part of the second paragraph.

**91-504. Investment and disposition of money and property.** The moneys thus deposited may, upon order of the court or judge, be invested, pending the proceedings, in securities of the United States, or of this



state, when such investment is for the best interests of the estate. At the final settlement of any estate, if there be no heirs or other claimants thereof, the district judge shall make an order directing the public administrator to sell all property belonging to the estate and pay the proceeds to the county treasurer, who shall keep an account with such estate of all moneys received and paid to him, and the county treasurer shall forthwith remit all of said money to the state board of equalization with a statement as to the estates to which the money belongs. The board shall immediately deliver such money to the state treasurer who shall thereupon deposit such money so received by him in the agency fund of the state of Montana.

**History:** En. Sec. 4, Ch. 184, L. 1943; amd. Sec. 111, Ch. 147, L. 1963; amd. Sec. 2, Ch. 156, L. 1971.

#### Amendments

The 1971 amendment substituted "the state board of equalization" for "the state

treasurer" near the end of the second sentence; and substituted "The board shall immediately deliver such money to the state treasurer who shall" for "And the state treasurer shall" at the beginning of the third sentence.

**91-505. Unsold personal property, how disposed of—auction sale.** If the personal property in an estate was not sold by the executor or administrator at the final settlement of the estates as by law provided, then it shall be the duty of such executor or administrator to turn over all of such property to the county treasurer, who in turn shall deliver it to the state board of equalization with a statement setting forth the name of the estate to which it belongs, and the state board of equalization must within one (1) year of the receipt of such property cause the same to be sold to the highest bidder at a public auction sale, at the board's office in Helena, Montana. The state board of equalization shall give notice of such sale by publication in a newspaper published in the city of Helena, Montana, once a week for two (2) successive weeks, making in all two (2) publications, the last publication to be at least twenty (20) days prior to the date of such sale. Such notice shall give the time and place of such sale and shall contain a list and description of the stocks, bonds, securities, effects, or other personal property to be sold. All of the expenses of such sale shall be deducted from the proceeds thereof by the state board of equalization and the balance of such proceeds shall be delivered by the board to the state treasurer for deposit in the agency fund of the state of Montana.

**History:** En. Sec. 5, Ch. 184, L. 1943; amd. Sec. 112, Ch. 147, L. 1963; amd. Sec. 3, Ch. 156, L. 1971.

#### Amendments

The 1971 amendment substituted references to the state board of equalization

for references to the state treasurer in five places; and substituted "shall be delivered by the board to the state treasurer for deposit" for "shall be deposited by the state treasurer" near the end of the section.

**91-506. Unsold real property, how disposed of—auction sale.** If the real property was not sold by the executor or administrator or public administrator at the final settlement of the estate as by law provided, then it shall be the duty of the executor or administrator or public administrator to make and execute to the state of Montana an executor's or

administrator's deed and to deliver the same to the county clerk and recorder of the county wherein such real property is situated, and it shall then become the duty of the county clerk and recorder to file and record said deed, without charge, and after being so recorded the county clerk and recorder shall mail the said deed to the state board of equalization which shall make a record thereof and deliver the deed to the state board of land commissioners. Within one (1) year after the receipt of such recorded deed the state board of land commissioners shall cause such property to be sold to the highest bidder at public auction sale, to be held at the courthouse in the county where such real property or any part thereof is situated. The state board of land commissioners shall give notice of such sale by publication in a newspaper published in the county wherein such real estate or any part thereof is situated once a week for two (2) weeks, making in all two (2) publications, the last publication to be at least twenty (20) days prior to the date of such sale. Such notice shall give the time and place of such sale and contain a description of the real property to be sold. All expenses of such sale shall be deducted by the state board of land commissioners from the proceeds thereof and the balance of such proceeds shall be turned over to the state treasurer who shall deposit the same in the agency fund of the state of Montana. The board of land commissioners shall provide the state board of equalization with a statement indicating the sale price, expenses and net proceeds resulting from each such sale.

**History:** En. Sec. 6, Ch. 184, L. 1943; amd. Sec. 113, Ch. 147, L. 1963; amd. Sec. 4, Ch. 156, L. 1971.

#### Amendments

The 1971 amendment inserted "to the state board of equalization which shall make a record thereof and deliver the deed" near the end of the first sentence; and added the final sentence.

**91-507. Unclaimed personal property in hands of agent—disposal.** Whenever the personal property in an estate remains in the hands of an agent, unclaimed for two (2) years and it appears to the court or judge that it is for the best interests of the estate and those interested therein, such property shall be sold under the order of the court or judge and the proceeds, after deducting the expense of the sale allowed by the court or judge, must be paid to the state board of equalization for deposit into the state treasury, and upon receipt of such proceeds it shall be the duty of the state treasurer to deposit the same in the agency fund of the state of Montana.

**History:** En. Sec. 7, Ch. 184, L. 1943; amd. Sec. 114, Ch. 147, L. 1963; amd. Sec. 5, Ch. 156, L. 1971.

#### Amendments

The 1971 amendment inserted "to the state board of equalization for deposit" after "must be paid" in the latter part of the section.

**91-508. Sales by state board of equalization, how conducted.** All hereinbefore mentioned sales by the state board of equalization must be at public auction at the board's office. Said sales must be for cash and shall be made to the highest bidder, provided, however, that the board may reject all bids which are disproportionate to the value of the property being sold.

**History:** En. Sec. 8, Ch. 184, L. 1943; amd. Sec. 6, Ch. 156, L. 1971.

**Amendments**

The 1971 amendment substituted refer-

ences to the state board of equalization for references to the state treasurer in three places; and deleted "in the state capitol" from the end of the first sentence.

**91-512. Duty of attorney general—employment of special assistant.** The attorney general of the state of Montana shall be the legal adviser in connection with all escheated property matters and it shall be the duty of the attorney general to make investigations and conduct inquiries to determine whether there is property in the state of Montana which should escheat to the state of Montana, and to take all steps necessary to secure such escheat, and for this purpose the attorney general is authorized and empowered to employ a special assistant and incur necessary expenses subject to appropriation limitations.

**History:** En. Sec. 12, Ch. 184, L. 1943; amd. Sec. 1, Ch. 193, L. 1953; amd. Sec. 115, Ch. 147, L. 1963; amd. Sec. 1, Ch. 377, L. 1971.

**Amendments**

The 1971 amendment substituted "and incur necessary expenses subject to ap-

propriation limitations" at the end of the section for "at a salary not to exceed six thousand dollars (\$6,000.00) per annum together with actual, necessary expenses while engaged in outside work in connection with the duties of his office as defined by law."

**91-520. Conditions under which aliens in foreign country may inherit.**

**Injunction**

Residents of Romania could not enjoin enforcement of statute while probate case was at intermediate stage since state is free to fashion procedure for applying statute in manner not offensive to constitution. *Gorun v. Fall*, 287 F Supp 725, affirmed, 393 US 398, 21 L Ed 2d 628, 89 S Ct 678.

**Reciprocity**

Pursuant to Rule 44.1, M. R. Civ. P., trial court has power to fashion procedures for determination of whether reciprocity of transfer and reciprocity of inheritance exists between citizens of state and citizens of foreign country. In re *Estate of Giurgiu*, — M —, 466 P 2d 83.

**91-523. Disposition of money.** All money, including that realized from the sale or sales of property delivered to the county by an executor or administrator, under the provisions of this act shall, immediately upon its receipt by the county treasurer be delivered to the state board of equalization which shall immediately deliver same to the state treasurer and by him deposited in the agency fund of the state of Montana.

**History:** En. Sec. 4, Ch. 104, L. 1939; amd. Sec. 1, Ch. 18, L. 1947; amd. Sec. 116, Ch. 147, L. 1963; amd. Sec. 7, Ch. 156, L. 1971.

**Amendments**

The 1971 amendment inserted "to the state board of equalization which shall immediately deliver same" before "to the state treasurer" in the latter part of the section.

**CHAPTER 6—PROBATE PROCEEDINGS—PUBLIC ADMINISTRATOR**

**Section 91-623.** Estates less than fifteen hundred dollars (\$1,500).

**91-628.** Compensation of public administrator.

**91-623. (10012) Estates less than fifteen hundred dollars (\$1,500).** If the statement or statements furnished the public administrator in



accordance with the provisions of section 91-621 show that the aggregate market value of the estate of such deceased person is fifteen hundred dollars (\$1,500) or less in value, then, upon demand of the public administrator, the person, firm, bank, or corporation holding, controlling, or owning the same, or any part thereof, shall turn over, endorse, or surrender the same to such public administrator at once, without the issuance of letters of administration to him. The public administrator shall, upon receipt of the money, evidence of indebtedness, or other personal property, issue a receipt to the person, firm, bank, or corporation delivering the same to him fully describing the property received. Such receipt, signed by the public administrator, shall fully discharge the person, firm, bank, or corporation receiving the same from all further liability to the estate of said deceased person, to the amount of money or for the property set out in said receipt.

**History:** En. Sec. 3, Ch. 134, L. 1909; re-en. Sec. 10012, R. C. M. 1921; amd. Sec. 1, Ch. 36, L. 1929; amd. Sec. 1, Ch. 222, L. 1969.

#### Amendments

The 1969 amendment substituted "fifteen hundred dollars (\$1,500)" for "five hundred dollars (\$500.00)" after "estate of such deceased person is" in the first sentence.

**91-628. (10017) Compensation of public administrator.** The public administrator shall receive as full compensation for his services, including attorney's fees, a commission of fifteen per cent (15%) of the total amount of money received by him in any estate provided for in this act; provided, that in no case shall the compensation be less than twenty-five dollars (\$25).

**History:** En. Sec. 8, Ch. 134, L. 1909; re-en. Sec. 10017, R. C. M. 1921; amd. Sec. 1, Ch. 3, L. 1969.

#### Amendments

The 1969 amendment raised the administrator's minimum compensation from "five dollars" to "twenty-five dollars."

## CHAPTER 7—PROBATE PROCEEDINGS—GENERAL JURISDICTION OF DISTRICT COURT

**91-701. (10018) Jurisdiction of the court over the estate, etc.**

#### Residence of Decedent

County where intestate decedent was domiciled had sole and exclusive jurisdiction over her estate and where order from another county recited the correct do-

micile but nevertheless issued letters of administration, the order was void on its face and subject to both collateral and direct attack. In re Estate of Brown, — M —, 477 P 2d 882.

## CHAPTER 11—PROBATE PROCEEDINGS—CONTESTING WILLS AFTER PROBATE

**91-1101. (10042) The probate may be contested within six months.**

#### Issuance of Citation

Petition contesting will was properly dismissed where the citation was not issued within the statutory period follow-

ing admission of will to probate. In re Estate of Willner, 147 M 538, 416 P 2d 24, 25.

**91-1102. (10043) Citation to be issued to parties interested.****Timely Issuance of Citation**

Petition contesting will was properly dismissed where the citation was not

issued within statutory period following admission of will to probate. In re Estate of Willner, 147 M 538, 416 P 2d 24, 25.

**CHAPTER 13—PROBATE PROCEEDINGS—EXECUTIVES AND ADMINISTRATORS—ISSUANCE OF LETTERS TESTAMENTARY AND OF ADMINISTRATION**

**91-1301. (10056) To whom letters on proved will to issue.****Duty of Court**

Statute gives power to nominate executor to testator, so that court must appoint as executor person named in will unless he is incompetent under 91-1302. In re

Estate of Graf, 150 M 577, 437 P 2d 371.

**References**

In re Maricich's Estate, 145 M 146, 400 P 2d 873.

**91-1302. (10057) Who are incompetent as executors or administrators, etc.****Causes for Disqualifying**

Fact that named executors may have used undue influence in obtaining property of testator before death, thereby giving rise to claim in behalf of estate against

executors, is not in itself evidence of want of integrity such as will disqualify executors. In re Estate of Graf, 150 M 577, 437 P 2d 371.

**CHAPTER 14—PERSONS TO WHOM AND ORDER IN WHICH LETTERS OF ADMINISTRATION ARE GRANTED**

Section 91-1401. Order of persons entitled to administer—partner not to administer.

91-1405. Who are incompetent to act as administrators.

**91-1401. (10068) Order of persons entitled to administer—partner not to administer.** Administration of estate of all persons dying intestate and of all persons dying testate without appointing an executor who qualified for appointment must be granted to some one or more of the persons hereinafter mentioned or to persons nominated by them, and they are respectively entitled to preference thereto in the following order the relatives of the decedent being entitled to priority only when they are entitled to succeed to the estate or some portion thereof;

1. The surviving husband or wife.
2. The children.
3. The father or mother.
4. The brothers.
5. The sisters.
6. The grandchildren.
7. The next of kin entitled to share in the distribution of the estate.
8. A beneficiary under the will of the decedent.
9. The public administrator.
10. A creditor.
11. Any person legally competent.

If the decedent was a member of a partnership at the time of his decease, the surviving partner must in no case be appointed administrator of the estate.

**History:** En. Sec. 55, p. 253, L. 1877; re-en. Sec. 55, 2nd Div. Rev. Stat. 1879; amd. Sec. 55, 2nd Div. Comp. Stat. 1887; amd. Sec. 2430, C. Civ. Proc. 1895; re-en. Sec. 7432, Rev. C. 1907; re-en. Sec. 10068, R. C. M. 1921; amd. Sec. 1, Ch. 219, L. 1939; amd. Sec. 1, Ch. 68, L. 1969. Cal. C. Civ. Proc. Sec. 1365.

#### Amendments

The 1969 amendment inserted "and of all persons \* \* \* qualified for appointment," after "persons dying intestate" and "or to persons nominated by them" after "hereinafter mentioned" and added "the

relatives of the decedent \* \* \* some portion thereof" at the end of the first paragraph; deleted " , or some competent person whom he or she may request to have appointed" from paragraph 1; inserted new paragraph 8, and redesignated former paragraphs 8 to 10 as new paragraphs 9 to 11.

#### Creditor as Administrator

On claim for unpaid hospital expenses of decedent, proper remedy for hospital would have been to apply for letters of administration as creditor. *Daughters of Jesus v. Gee*, 153 M 342, 457 P 2d 471.

**91-1405. (10072) Who are incompetent to act as administrators.** No person is competent or entitled to serve as administrator or administratrix who is:

1. \* \* \* [Same as parent volume.]
2. Not a bona fide resident of the state; but if a person otherwise entitled to serve is not a resident of the state, he may nominate a resident of the state to serve as administrator, and the court or judge must order letters issued to the nominee.
3. and 4. \* \* \* [Same as parent volume.]

**History:** En. Sec. 59, p. 254, L. 1877; re-en. Sec. 59, 2nd Div. Rev. Stat. 1879; re-en. Sec. 59, 2nd Div. Comp. Stat. 1887; amd. Sec. 2434, C. Civ. Proc. 1895; amd. Sec. 1, p. 137, L. 1899; re-en. Sec. 7436, Rev. C. 1907; re-en. Sec. 10072, R. C. M. 1921; amd. Sec. 1, Ch. 59, L. 1969. Cal. C. Civ. Proc. Sec. 1369.

#### Amendments

The 1969 amendment deleted "and either the husband, wife, or child, or parent, or brother, or sister of the deceased, he may request the court or judge to appoint a

resident of the state to serve as administrator, and such person may be appointed, but no other nonresident than a surviving husband, wife, or child, or parent, or brother, or sister shall have such right to request an appointment, and" after "resident of the state," inserted, in place thereof, "he may nominate a resident of the state to serve as administrator," substituted "nominee" for "applicant" after "letters issued to the" and deleted "entitled thereto under the provisions of this chapter" at the end of paragraph 2.

### CHAPTER 17—OATHS AND BONDS OF EXECUTORS AND ADMINISTRATORS

**Section 91-1702.** Bond of administrators and executors, form and requirement of—when not required.

**91-1702. (10088) Bond of administrators and executors, form and requirement of—when not required.** Every person to whom letters testamentary or of administration are directed to issue must, before receiving them, execute a bond to the state of Montana, with two (2) or more sufficient sureties or a sufficient surety company, to be approved by the district court, or a judge thereof. In form, the bond must be joint and several, and the penalty must not be less than the value of the personal



property and the annual rents and profits of real property belonging to the estate, nor more than twice the value of such personal property and rents and profits; provided that upon written request of all the heirs, devisees, or legatees and all being over eighteen (18) years of age and entitled to all of the estate upon distribution, the court may in its discretion fix the penalty of the bond at any sum less than the value of the personal property, and the annual rents and profits of the real property belonging to the estate; and provided further that if, at the time of hearing any application for letters testamentary or of administration, it satisfactorily appears to the court or judge that the assets of the estate for which such letters of administration or letters testamentary are sought do not warrant the necessity of a bond on the part of the applicant, the court or judge may in its discretion order such letters to issue without bond; but such administrator or executor may at any time afterward, if it appear from any cause necessary or proper, be required to file a bond as in other cases.

**History:** En. Sec. 75, p. 257, L. 1877; re-en. Sec. 75, 2nd Div. Rev. Stat. 1879; re-en. Sec. 75, 2nd Div. Comp. Stat. 1887; amd. Sec. 2471, C. Civ. Proc. 1895; re-en. Sec. 7452, Rev. C. 1907; amd. Sec. 1, Ch. 173, L. 1919; re-en. Sec. 10088, R. C. M. 1921; amd. Sec. 1, Ch. 167, L. 1937; amd.

Sec. 1, Ch. 119, L. 1963; amd. Sec. 17, Ch. 423, L. 1971. Cal. C. Civ. Proc. Sec. 1388.

#### Amendments

The 1971 amendment reduced the age specified in the first proviso to the second sentence from 21 to 18 years, and made minor changes in style.

### CHAPTER 21—REMOVAL AND SUSPENSION OF EXECUTORS AND ADMINISTRATORS

#### 91-2101. (10124) Suspension of powers of executor.

##### Causes for Removal

Administratrix who failed to file inventory and appraisal within three months after appointment, failed to file first accounting within six months after appointment, failed to make money from sale of property available to heirs, failed

to provide estate with interest on money from sale of property, lost inheritance tax credit and allowed tax penalties to be assessed against estate was properly removed. In re Estate of Smith, 149 M 326, 426 P 2d 575.

#### 91-2102. (10125) Executor to have notice of his suspension, etc.

##### Causes for Removal

Administratrix who failed to file inventory and appraisal within three months after appointment, failed to file first accounting within six months after appointment, failed to make money from sale of property available to heirs, failed

to provide estate with interest on money from sale of property, lost inheritance tax credit and allowed tax penalties to be assessed against estate was properly removed. In re Estate of Smith, 149 M 326, 426 P 2d 575.

### CHAPTER 22—INVENTORY AND APPRAISEMENT—POSSESSION OF ESTATE

Section 91-2212. Funds on deposit at financial institution—surviving spouse may withdraw—affidavit required.

91-2213. Affidavit sufficient to require release of funds—liability of financial institutions and their representatives discharged.

**91-2201. (10129) Inventory to be returned, including the homestead.****Causes for Removal**

Administratrix who failed to file inventory and appraisal within three months after appointment, failed to file first accounting within six months after appointment, failed to make money from sale of property available to heirs, failed

to provide estate with interest on money from sale of property, lost inheritance tax credit and allowed tax penalties to be assessed against estate was properly removed. In re Estate of Smith, 149 M 326, 426 P 2d 575.

**91-2212. Funds on deposit at financial institution—surviving spouse may withdraw—affidavit required.** Whether a person dies testate or intestate, and irrespective of the character of his or her property, if the value of the estate does not exceed five thousand dollars (\$5,000), the spouse of the decedent may collect from any bank, banking institution, savings and loan association or credit union, any moneys held to the credit of the decedent not to exceed the total sum of one thousand dollars (\$1,000), without procuring letters testamentary or of administration, upon furnishing such bank or organization with an affidavit showing the right of the affiant to receive such money.

**History:** En. Sec. 1, Ch. 119, L. 1969.

**Title of Act**

An act providing that a surviving spouse

may withdraw funds from financial institutions without probate proceedings in certain cases.

**91-2213. Affidavit sufficient to require release of funds—liability of financial institutions and their representatives discharged.** The receipt of such affiant or affiants shall constitute sufficient acquittance for the payment of money made pursuant to the provisions of this act, and shall fully discharge such person, representative, officer, bank, institution, corporation or body from any further liability with reference thereto, without the necessity of inquiring into the truth of any of the facts stated in the affidavit. But such payment shall not preclude administration of the estate of the decedent when necessary to enforce payment of the decedent's debts.

**History:** En. Sec. 2, Ch. 119, L. 1969.

**CHAPTER 27—CLAIMS AGAINST ESTATE****91-2701. (10170) Notice to creditors, etc.****Time for Presenting Claims**

All claims against estate arising from contract must be presented to executor

within four months of first publication of notice to creditors. Brown v. Midland Nat. Bank, 150 M 422, 435 P 2d 878.

**91-2704. (10173) Time within which claims against an estate, etc.****Actual Notice Unnecessary**

Bank which failed to present claim on note against decedent's estate within statutory time was barred where notice by publication appeared in only newspaper in community of 1,800 citizens of which both bank and decedent were residents; bank's contention that it received no actual notice which could have been accomplished with ease and that to bar claim under such

circumstances was deprivation of property without due process of law was rejected. Baker Nat. Bank v. Henderson, 151 M 526, 445 P 2d 574.

**Contract Claims**

All claims against estate arising from contract must be presented to executor within four months of first publication of notice to creditors. Brown v. Midland Nat. Bank, 150 M 422, 435 P 2d 878.

**Mechanic's Lien**

A mechanic's lien under sections 45-501 to 45-512 is not a claim arising upon a contract within the meaning of this

section and the lien is not lost because creditor's claim is not filed. *Hammer v. Chapin*, 256 F Supp 818, 820.

**91-2709. (10178) Limitation of actions on rejected claim.****Exclusive Nature of Procedure**

Rule 41(e), M. R. Civ. P., providing for dismissal of action for failure to serve summons as provided therein, does not apply to service of summons in suit on rejected claim in probate which is governed exclusively by statute providing for contesting rejected claims in probate. *Werning v. McFarland*, 149 M 137, 423 P 2d 851.

**Suit after Discharge**

Summons, in suit on rejected claim filed within three-month statutory limit, served

after discharge in probate was not substantial compliance with statutory requirement to "bring suit" within three months of rejection of claim. *Werning v. McFarland*, 149 M 137, 423 P 2d 851.

**Variance between Claim and Suit**

Claim sued upon must be within scope of claim presented to executor, so that action for breach of contract to bequeath could not be predicated upon creditor's claim to recover debt. *Brown v. Midland Nat. Bank*, 150 M 422, 435 P 2d 878.

**91-2711. (10180) Claims must be presented before suit.****Claim for Hospital Expenses**

In action to recover unpaid hospital expenses from decedent's heirs at law, who had distributed assets without having administrator appointed, trial court improperly granted relief to plaintiff hospital since it could not sue upon its claim until it first presented such claim to administrator; thus, proper remedy would have been for hospital to apply for letters of administration as creditor, and hospital's

attempted remedy circumvented statutory priorities for payment of debts. *Daughters of Jesus v. Gee*, 153 M 342, 457 P 2d 471.

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Claim sued upon must be within scope of claim presented to executor, so that action for breach of contract to bequeath could not be predicated upon creditors' claim to recover debt. *Brown v. Midland Nat. Bank*, 150 M 422, 435 P 2d 878.

## CHAPTER 28—SALES OF PROPERTY OF ESTATE IN GENERAL— BORROWING MONEY—SALES OF CERTAIN PERSONAL PROPERTY

**91-2801. (10195) Estate chargeable with debts—no priority.****Hospital Expenses**

In action to recover unpaid hospital expenses from decedent's heirs at law, who had distributed assets of decedent's estate without having administrator appointed, trial court improperly granted relief to plaintiff hospital since it could not sue upon its claim until it first presented such

claim to administrator; thus, proper remedy would have been for hospital to apply for letters of administration as creditor, and hospital's attempted remedy circumvented statutory priorities for payment of debts. *Daughters of Jesus v. Gee*, 153 M 342, 457 P 2d 471.

## CHAPTER 30—SALES OF REAL ESTATE AND CONTRACTS FOR PURCHASE OF LAND

Section 91-3009. Contents of order of sale—conditions of sale—public or private.

**91-3009. (10218) Contents of order of sale—conditions of sale—public or private.** The order of sale must describe the lands to be sold and the terms of sale which may be for cash, or for part cash and the balance on a credit not exceeding five (5) years where the sales price is five thousand dollars (\$5,000) or less, payable in gross or in installments,



with interest, as the court or judge may direct. For sales where the sales price exceeds five thousand dollars (\$5,000), deferred payments may be extended not to exceed twenty (20) years. The land may be sold in one parcel or in subdivisions, as the executor or administrator shall judge most beneficial to the estate, unless the court or judge otherwise specially directs. If it appears that any part of such real estate has been devised, and not charged in such devise with the payment of debts or legacies, the court or judge must order the remainder to be sold before that so devised. Every such sale must be ordered to be made at public auction, unless, in the opinion of the court or judge, it would benefit the estate to sell the whole or some part of such real estate at private sale. The court or judge may, if the same is asked for in the petition, order or direct such real estate, or any part thereof, to be sold at either public or private sale, if the executor or administrator shall deem it to be most beneficial for the estate. If the executor or administrator neglects or refuses to make a sale under the order, and as directed therein, he may be compelled to sell, by order of the court or judge, made on motion, after due notice by any party interested.

**History:** En. Sec. 194, p. 290, L. 1877; re-en. Sec. 194, 2nd Div. Rev. Stat. 1879; re-en. Sec. 194, 2nd Div. Comp. Stat. 1887; amd. Sec. 2678, C. Civ. Proc. 1895; re-en. Sec. 7569, Rev. C. 1907; re-en. Sec. 10218, R. C. M. 1921; amd. Sec. 1, Ch. 49, L. 1943; amd. Sec. 1, Ch. 64, L. 1969. Cal. C. Civ. Proc. Sec. 1544.

#### Amendments

The 1969 amendment inserted "where the sales price is five thousand dollars (\$5,000) or less," after "not exceeding five (5) years" in the first sentence; and inserted the present second sentence.

## CHAPTER 32—GENERAL POWERS AND DUTIES OF EXECUTORS AND ADMINISTRATORS

### 91-3202. (10258) Executors and administrators may sue and be sued.

#### Failure To Join Beneficiary

Although proper procedure was followed in bringing suit against administrator of estate without joining all beneficiaries, conduct of parties in perpe-

trating fraud on court required that judgment be vacated on motion of aggrieved beneficiary who was not party to suit. *Selway v. Burns*, 150 M 1, 429 P 2d 640.

## CHAPTER 33—CONVEYANCE OF REAL ESTATE BY EXECUTORS AND ADMINISTRATORS

Section 91-3302. Petition for executor or administrator to make conveyance and notice of hearing.

**91-3302. (10269) Petition for executor or administrator to make conveyance and notice of hearing.** On the presentation of a verified petition by the executor or administrator, or by any person claiming to be entitled to such conveyance from an executor or administrator, setting forth the facts upon which the claim is predicated, the court, or a judge thereof, shall appoint a time and place for hearing the petition, and shall order notice thereof to be served on the executor or administrator personally when he is not the petitioner, and a copy thereof served upon each known heir, or, in the event of minor or incompetent heirs, upon the duly appointed and qualified guardian for such incompetent or minor, not less

than twenty (20) days prior to the date of said hearing; or the court may order notice by publication for four (4) successive weeks in such newspaper in the county as the court may designate, provided, however, that if such contract was of record at the date of the death of the person executing such contract, then, in that event, notice of such hearing may be given by serving such notice on the executor or administrator personally, when he is not the petitioner, and posting such notice in three (3) public places in the county where the court is held, for at least ten (10) days prior to the day fixed for the hearing; provided, further, that if the written consent of all the known heirs over the age of eighteen (18) years and the guardian, duly authorized, of all minor or incompetent heirs be obtained and filed in the court before which said hearing is pending, then no other or further notices shall be required.

History: En. Sec. 237, p. 302, L. 1877; re-en. Sec. 237, 2nd Div. Rev. Stat. 1879; re-en. Sec. 237, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2751, C. Civ. Proc. 1895; re-en. Sec. 7615, Rev. C. 1907; re-en. Sec. 10269, R. C. M. 1921; amd. Sec. 1, Ch. 173, L. 1937; amd. Sec. 18, Ch. 423, L. 1971. Cal. C. Civ. Proc. Sec. 1598.

#### Amendments

The 1971 amendment reduced the age specified in the final proviso from 21 to 18 years, and made minor changes in style.

### CHAPTER 34—LIABILITIES AND COMPENSATION OF EXECUTORS AND ADMINISTRATORS

#### 91-3407. (10287) Compensation of executors and administrators.

##### Neglect and Mismanagement of Estate

Removed administratrix and her attorneys who had failed to make money from sale of property available to heirs, failed to provide for interest on money from sale of property for benefit of estate, lost inheritance tax credit and allowed tax

penalties to be assessed against estate were properly awarded fees less than those provided for by statute which applies only to fees for successful completion of estate. In re Estate of Smith, 149 M 326, 426 P 2d 575.

### CHAPTER 35—ACCOUNTING AND SETTLEMENT BY EXECUTORS AND ADMINISTRATORS

#### 91-3501. (10288) Exhibit of receipts and disbursements, etc.

##### Inventory of Assets

Administratrix who failed to file inventory and appraisal within three months after appointment, failed to file first accounting within six months after appointment, failed to make money from sale of property available to heirs,

failed to provide estate with interest on money from sale of property, lost inheritance tax credit and allowed tax penalties to be assessed against estate was properly removed. In re Estate of Smith, 149 M 326, 426 P 2d 575.

#### 91-3507. (10294) Repealed.

##### Repeal

Section 91-3507 (Sec. 260, p. 307, L. 1877), relating to the rendering of ac-

counts after notice to creditors, was repealed by Sec. 1, Ch. 272, Laws 1969.

#### 91-3516. (10303) Settlement of account to be conclusive, etc.

##### Effect of Fraud

Final decree of distribution and discharge in probate will not be set aside on

ground of inadvertence or fraud under statute or Rule 60(b), M. R. Civ. P., in absence of manifest abuse of court's dis-

cretion to grant relief thereunder in case where moving party had every opportunity to protect his claim in probate and

failed to do so. *Werning v. McFarland*, 149 M 137, 423 P 2d 851.

## CHAPTER 36—DEBTS OF THE ESTATE—PAYMENT OF

### 91-3601. (10307) Order of payment of debts.

#### Circumvention of Payment Priorities

In action to recover unpaid hospital expenses from decedent's heirs at law, who had distributed assets of decedent's estate without having administrator appointed, trial court improperly granted relief to plaintiff hospital since it could not sue upon its claim until it first presented such

claim to administrator; thus, proper remedy would have been for hospital to apply for letters of administration as creditor, and hospital's attempted remedy circumvented statutory priorities for payment of debts. *Daughters of Jesus v. Gee*, 153 M 342, 457 P 2d 471.

### 91-3606. (10312) Provision for disputed and contingent claims.

#### Summons after Discharge

Summons, in suit on rejected claim filed within three-month statutory limit, served after discharge in probate was not substantial compliance with statutory require-

ment to "bring suit" within three months of rejection of claim and relieved executrix of statutory duty to pay amount of disputed claim into court. *Werning v. McFarland*, 149 M 137, 423 P 2d 851.

## CHAPTER 39—FINAL DISTRIBUTION OF ESTATE —DISCHARGE OF EXECUTOR OR ADMINISTRATOR

Section 91-3906. Final settlement, order and discharge.

**91-3906. (10332) Final settlement, order and discharge.** When the estate has been fully administered, and it is shown by the executor or administrator, by the production of satisfactory vouchers, that he has paid all sums of money due from him, and delivered up, under the order of the court or judge, all the property of the estate to the parties entitled, and performed all the acts lawfully required of him, the court or judge must make an order discharging him from all liability to be incurred thereafter. If the estate has not been distributed in its entirety, and the executor or administrator discharged within two (2) years from the date of initial appointment of the executor or administrator, the clerk of the district court shall advise the district judge thereof and the judge shall notify the executor, administrator and his attorney of record to appear before the court and show cause why the estate has not been distributed in its entirety and the executor or administrator discharged.

If after such show cause hearing, the judge determines that good cause does not exist for failure to distribute the estate, the judge shall make an order directing that the estate be distributed in its entirety within thirty (30) days and that the executor or administrator and his attorney shall receive no fee or other compensation from the estate.

**History:** En. Sec. 2886, C. Civ. Proc. 1895; re-en. Sec. 7696, Rev. C. 1907; re-en. Sec. 10332, R. C. M. 1921; amd. Sec. 1, Ch. 260, L. 1971. Cal. C. Civ. Proc. Sec. 1697.

#### Amendments

The 1971 amendment added the second sentence to the first paragraph; and added the second paragraph.



## CHAPTER 42—SETTLEMENT OF ACCOUNTS OF TRUSTEES AFTER DISTRIBUTION OF ESTATE

Section 91-4201. Court not to lose jurisdiction of trusts by distribution—accounts of trustees.

**91-4201. (10352) Court not to lose jurisdiction of trusts by distribution—accounts of trustees.** Where any trust has been created by or under any will to continue after distribution, the district court shall not lose jurisdiction of the estate by final distribution, but shall retain jurisdiction thereof for the purpose of the settlement of accounts under the trust as provided in Title 86.

**History:** En. Sec. 2900, C. Civ. Proc. 1895; re-en. Sec. 7698, Rev. C. 1907; re-en. Sec. 10352, R. C. M. 1921; amd. Sec. 2, Ch. 24, L. 1969. Cal. C. Civ. Proc. Sec. 1699.

### Amendments

The 1969 amendment added "as provided in Title 86" at the end of the first sentence; and deleted the former second through the fifth sentences. For text, see parent volume.

## CHAPTER 43—PROBATE PROCEEDINGS, MISCELLANEOUS—CITATIONS—APPEALS, ETC.

Section 91-4324. Validation of fiduciary sales before 1965.  
 91-4325. Validation of fiduciary sales before 1967.  
 91-4326. Validation of fiduciary sales before 1969.  
 91-4327. Validation of fiduciary sales before 1971.

**91-4306. (10360) Citation—how issued.**

### Refusal to Issue

Where clerk of court mistakenly refused to issue citation pursuant to this section, resulting in lapse under statute of limitations, it was improper for the

district judge to issue nunc pro tunc order backdating such citation. *State ex rel. Craig v. District Court*, 153 M 427, 458 P 2d 608.

**91-4324. Validation of fiduciary sales before 1965.** All sales, provided no action is now pending to set aside such deed or conveyance, by trustees, executors, administrators and guardians which previous to the effective date of this act, were made to purchasers for a valuable consideration, which consideration has been paid by such purchasers in good faith, and such sales shall not have been set aside by the district or probate court having jurisdiction thereof, shall be sufficient to sustain a trustee's, executor's, administrator's or guardian's deed or conveyance to such purchaser, and, in case such deed or conveyance shall not have been given, shall entitle such purchaser to such deed or conveyance; and such deed or conveyance, if now executed or when executed, shall be sufficient to convey to such purchaser all the title that such beneficiary, decedent or ward had in said real or personal property; and all irregularities in obtaining the order of the court for such sale, and all irregularities or defects in making or conducting such sale by said trustee, executor, administrator or guardian, shall be disregarded, and such sale shall not be invalidated by reason of any such defect or irregularity.

**History:** En. Sec. 1, Ch. 60, L. 1965.

**Title of Act**

An act validating deeds and conveyances in sales of land and personal property heretofore made by trustees, executors, administrators and guardians, curing

defects and irregularities in such sales, containing a repealing clause.

**Repealing Clause**

Section 2 of Ch. 60, Laws 1965 repealed all acts and parts of acts in conflict therewith.

**91-4325. Validation of fiduciary sales before 1967.** All sales, provided no action is now pending to set aside such deed or conveyance, by trustees, executors, administrators and guardians which previous to January 1, 1967, were made to purchasers for a valuable consideration, which consideration has been paid by such purchasers in good faith, and such sales shall not have been set aside by the district or probate court having jurisdiction thereof, shall be sufficient to sustain a trustee's, executor's, administrator's or guardian's deed or conveyance to such purchaser, and, in case such deed or conveyance shall not have been given, shall entitle such purchaser to such deed or conveyance; and such deed or conveyance, if now executed or when executed, shall be sufficient to convey to such purchaser all the title that such beneficiary, decedent or ward had in said real or personal property; and all irregularities in obtaining the order of the court for such sale, and all irregularities or defects in making or conducting such sale by said trustee, executor, administrator or guardian, shall be disregarded, and such sale shall not be invalidated by reason of any such defect or irregularity.

**History:** En. Sec. 1, Ch. 182, L. 1967.

**Title of Act**

An act validating deeds and conveyances in sales of land and personal prop-

erty made by trustees, executors, administrators and guardians prior to January 1, 1967, curing defects and irregularities in such sales.

**91-4326. Validation of fiduciary sales before 1969.** All sales, provided no action is now pending to set aside such deed or conveyance, by trustees, executors, administrators and guardians which previous to January 1, 1969, were made to purchasers for a valuable consideration, which consideration has been paid by such purchasers in good faith, and such sales shall not have been set aside by the district or probate court having jurisdiction thereof, shall be sufficient to sustain a trustee's, executor's, administrator's, or guardian's deed or conveyance to such purchaser, and in case such deed or conveyance shall not have been given, shall entitle such purchaser to such deed or conveyance; and such deed or conveyance, if now executed or when executed, shall be sufficient to convey to such purchaser all the title that such beneficiary, decedent or ward had in said real or personal property; and all irregularities in obtaining the order of the court for such sale, and all irregularities or defects in making or conducting such sale by said trustee, executor, administrator or guardian, shall be disregarded, and such sale shall not be invalidated by reason of any such defect or irregularity.

**History:** En. Sec. 1, Ch. 75, L. 1969.

**Title of Act**

An act validating deeds and conveyances in sales of land and personal property

made by trustees, executors, administrators and guardians prior to January 1, 1969, curing defects and irregularities in such sales.

91-4327. **Validation of fiduciary sales before 1971.** All sales, provided no action is now pending to set aside such deed or conveyance, by trustees, executors, administrators and guardians which previous to January 1, 1971, were made to purchasers for a valuable consideration, which consideration has been paid by such purchasers in good faith, and such sales shall not have been set aside by the district or probate court having jurisdiction thereof, shall be sufficient to sustain a trustee's, executor's, administrator's or guardian's deed, or conveyance to such purchaser, and in case such deed or conveyance shall not have been given, shall entitle such purchaser to such deed or conveyance; and such deed or conveyance, if now executed or when executed, shall be sufficient to convey to such purchaser all the title that such beneficiary, decedent or ward had in said real or personal property; and all irregularities in obtaining the order of the court for such sale, and all irregularities or defects in making or conducting such sale by said trustee, executor, administrator or guardian, shall be disregarded, and such sale shall not be invalidated by reason of any such defect or irregularity.

**History:** En. Sec. 1, Ch. 98, L. 1971.

**Title of Act**

An act validating deeds and conveyances in sales of land and personal prop-

erty made by trustees, executors, administrators and guardians prior to January 1, 1971, curing defects and irregularities in such sales.

## CHAPTER 44—INHERITANCE TAX

- Section 91-4411. Estate tax.  
 91-4414. Exemptions from first \$25,000.  
 91-4414.1. Discretionary waiver of inheritance tax of surviving spouse.  
 91-4415. When payment due—lien of tax—liability for payment—place of payment—receipts—receipt or bond required before final accounting allowed.  
 91-4416. Discount—interest.  
 91-4417. Powers of representative in collection and payment of tax—collection from legatees or distributees.  
 91-4418. Refunding of tax—when authorized—manner of refunding—advance payment of tax for relief from penalty and interest.  
 91-4437. Order determining tax—contents.  
 91-4450. Monthly reports of county treasurer—payment of collections to state board of equalization—interest on unpaid amounts.

### 91-4401. (10400.1) Taxes on transfer—when and how imposed.

#### Tenants in Common

Where husband died after he and his wife had conveyed land owned as tenants in common to sons, reserving a life estate with right of survivorship, wife, who obtained deceased husband's one-half inter-

est in land was subject to inheritance tax on husband's interest under section 91-4405, but sons' interests were not taxable until termination of the mother's life estate. In re Hess' Estate, 145 M 552, 403 P 2d 748.

### 91-4402. (10400.1) Transfers in contemplation of death.

#### Possession Postponed

Where husband and wife held real property as tenants in common, but transferred one half of the property to one son, and the other half to the other son, reserving a life estate in each piece of

property with right of survivorship, on father's death sons were not subject to inheritance tax until termination of the mother's intervening life estate. In re Hess' Estate, 145 M 552, 403 P 2d 748.



**91-4405. (10400.1) Joint estates, government bonds, tenants, etc.**

**Applicable Property**

Since the 1951 amendment, this section, including the clause excepting from taxation property shown to have belonged to the survivor and not the decedent, applies whether the property is tangible or intangible or whether the purchase price or the actual property is the subject of the joint tenancy. In re Parks' Estate, 145 M 333, 401 P 2d 83.

**Corporate Stock**

Corporate stock registered in both the husband's and wife's names, but purchased by the wife, and in her possession, was not subject to inheritance tax on death of husband. In re Parks' Estate, 145 M 333, 401 P 2d 83.

**Nontaxable Transfers**

The 1951 amendment, stipulating that upon the death of one of the spouses, "the right of the survivor or survivors to the immediate possession or ownership is a taxable transfer," when read in conjunction with the clause excepting property shown to have belonged originally to the survivor, shows that a "transfer" is taxed, but what in reality is not a "transfer" is not taxed. In re Parks' Estate, 145 M 333, 401 P 2d 83.

**References**

In re Hess' Estate, 145 M 552, 403 P 2d 748.

**91-4407. (10400.1) Tax on clear market value—deductions.**

**Clear Market Value**

Clear market value as used in this section means net value in the open market as determined by price willing but not obligated buyer would pay and willing but not obligated seller would accept, with both parties knowing all pertinent facts affecting value. In re Estate of Power, — M —, 476 P 2d 506.

Valuation of United States Treasury

bonds redeemable at par in discharge of federal estate tax liability must be based on clear market value on date of decedent's death for purposes of this section rather than on par value. In re Estate of Power, — M —, 476 P 2d 506.

**References**

Cited in Salvation Army v. State, 144 M 415, 396 P 2d 463, 466.

**91-4411. (10400.3a) Estate tax.** (a) In addition to the inheritance taxes hereinabove imposed, an estate tax is hereby imposed upon the transfer of the estate of every decedent leaving an estate which is subject to the federal estate tax imposed by the United States of America under the applicable provisions of the Internal Revenue Code and which has, in whole or in part, a taxable situs in this state. The tax hereby imposed upon the transfer of each such estate shall be equal to the maximum tax credit allowable for state death taxes against the federal estate tax imposed with respect to the portion of the decedent's estate having a taxable situs in this state, less the inheritance taxes, if any, due this state, it being the purpose and intent of this section to impose only such additional taxes hereunder as may be necessary to give this state the full benefit of the maximum tax credit allowable against the federal estate tax imposed with respect to a decedent's estate which has a taxable situs in this state. If only a portion of a decedent's estate has a taxable situs in this state, such maximum tax credit shall be determined by multiplying the entire amount of the credit allowable against the federal estate tax for state death taxes by the percentage which the value of the portion of the decedent's estate which has a taxable situs in this state bears to the value of the entire estate. The tax imposed herein shall be collected by the several county treasurers or the state board of equalization for deposit with the state treasurer and distributed as hereafter provided. For the purpose of this tax, the taxable situs of property shall be the same as the taxable situs for inheritance tax purposes.

(b) and (c). \* \* \* [Same as parent volume.]

(d) Lien. Said taxes and interest shall be, and remain, a lien on the property for a period of ten (10) years from the date of death, unless sooner paid.

(e). \* \* \* [Same as parent volume.]

(f) Duplicate returns. It shall be the duty of the legal representative of the estate of any decedent, whose estate may be subject to the payment of a United States estate tax, to file duplicates of the United States estate tax returns with the district court of the county in which such estate is being probated. He shall also file with such court a certificate or other evidence from the bureau of internal revenue showing the amount of the United States estate tax as computed by that department. The district court shall hear all parties desiring to be heard with respect to the amount of state estate tax and shall enter an order determining such tax and the amount thereof so due and payable. Any person in interest aggrieved by such determination shall have the same right of rehearing and appeal as is now provided for in the determination of inheritance taxes.

(g) Intent of subdivisions (a) to (h). It is hereby declared to be the intent and purpose of subdivisions (a) to (h) to obtain for this state the benefit of the credit allowed under the provisions of said Internal Revenue Code, to the extent that this state may be entitled by the provisions of said act, by imposing additional taxes and the same shall be liberally construed to effect this purpose.

(h). \* \* \* [Same as parent volume.]

**History:** En. Sec. 2, Ch. 48, Ex. L. 1933; amd. Sec. 1, Ch. 360, L. 1969; amd. Sec. 1, Ch. 28, L. 1971.

#### **Amendments**

The 1969 amendment substituted "Internal Revenue Code of 1954" for "United States Revenue Act of 1926" in subsection (a); and "Internal Revenue Code" for "United States Revenue Act" in subsections (a) and (g).

The 1971 amendment rewrote subsection (a), for previous text of which see parent volume; inserted the ten-year limitation in subsection (d); deleted "who

was a resident of this state at the time of his death" after "decedent" in the first sentence of subsection (f); and made minor changes in phraseology.

#### **Effective Dates**

Section 2 of Ch. 360, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 14, 1969.

Section 2 of Ch. 28, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 16, 1971.

### **DECISIONS UNDER FORMER LAW**

#### **Reference to Federal Act**

Fact that 1926 Revenue Act, formerly referred to in this section, has been repealed and 1939 Act has been passed in

its place in no way affects validity or effectiveness of this section. In re Estate of McLaughlin, 154 M 318, 462 P 2d 882.

**91-4414. (10400.4) Exemptions from first \$25,000.** The following exemptions from the tax are hereby allowed, the exemption allowed to each person, institution, association, corporation and body politic to be taken out of the first twenty-five thousand dollars passing by any such transfer to such person, institution, association, corporation or body politic:

(1). \* \* \* [Same as parent volume.]

(2) \$20,000; \$5,000; \$2,000 exempt, when. Property of the clear value of twenty thousand dollars (\$20,000), transferred to the wife or to the husband of the decedent, five thousand dollars (\$5,000) transferred to each minor lineal issue of the decedent, or any child adopted as such in conformity with law, or any child to whom such decedent for not less than ten (10) years prior to such transfer stood in the mutually acknowledged relation of a parent, provided, however, such relationship began at or before the child's fifteenth (15) birthday, and was continuous for ten (10) years, or any lineal issue of such adopted or mutually acknowledged child, and two thousand dollars (\$2,000) transferred to each of the lineal issue who have attained majority and to each of the other persons described in the first subdivision of section 91-4409 shall be exempt. Such exemption to the widow shall include all her statutory dower and other allowances. Any child of the decedent shall be entitled to credit for so much of the tax paid by the widow as applied to any property which shall thereafter be transferred by or from such widow to any such child, provided the widow does not survive said decedent to exceed ten years.

(3) and (4). \* \* \* [Same as parent volume.]

**History:** En. Sec. 4, Ch. 65, L. 1923; amd. Sec. 1, Ch. 105, L. 1953; amd. Sec. 1, Ch. 218, L. 1963; amd. Sec. 1, Ch. 244, L. 1965; amd. Sec. 1, Ch. 343, L. 1969.

**Amendments**

The 1965 amendment increased exemptions specified in the first sentence of paragraph (2) from \$17,500 to \$20,000 for the wife of the decedent, and from \$5,000 to \$10,000 for the husband of the decedent.

The 1969 amendment increased exemptions specified in the first sentence of paragraph (2) from \$10,000 to \$20,000 for the husband of decedent; inserted \$5,000 exemption for transfers to children; and included decedent's lineal issue who have attained majority under the \$2,000 exemption.

**91-4414.1. Discretionary waiver of inheritance tax of surviving spouse.** Notwithstanding any provision of law or statute in conflict herewith, the state board of equalization, in its discretion, is authorized to issue a waiver of inheritance tax in the event of the death of any person leaving any real property or personal property, or both, in joint tenancy with a surviving spouse if the value of the property of the decedent is less than the inheritance exemption allowed by law to the surviving spouse.

**History:** En. Sec. 1, Ch. 147, L. 1969.

**Title of Act**

An act allowing the state board of equalization, in its discretion, to issue a waiver of inheritance tax in the event of

the death of any person leaving any real property or personal property, or both, in joint tenancy with a surviving spouse if the value of the property of the decedent is less than the inheritance exemption allowed by law to the surviving spouse.

**91-4415. (10400.5) When payment due—lien of tax—liability for payment—place of payment—receipts—receipt or bond required before final accounting allowed.** All taxes imposed by this act shall be due and payable at the time of the death of the decedent, except as hereinafter provided; and every such tax shall be and remain a lien upon the property



transferred for a period of ten (10) years from the time of the death of the decedent, whether said death occurred before or after the effective date of this act, unless sooner paid, and the person to whom the property is transferred and the administrators, executors, and trustees of every estate so transferred shall be personally liable for such tax until its payment.

The tax shall be paid to the state board of equalization for transmittal to the state treasurer or to the treasurer of the county in which the district court is situated having jurisdiction as herein provided, and if paid to the county treasurer said treasurer shall receipt therefor, making five copies thereof, and distribute said copies as follows: original receipt, to the clerk of the district court; first copy, to the executor, administrator, trustee, or person paying said tax; second copy, attached to and mailed with the report required by section 91-4450, as amended, to the state board of equalization; third copy, to the county clerk and recorder; fourth copy, retained by the treasurer on file in his office. The copy of the receipt given to the executor, administrator, or trustee shall be a proper voucher in the settlement of his accounts.

No executor, administrator, or trustee shall be entitled to a final accounting of an estate, in settlement of which a tax is due under the provisions of this act, unless he shall produce such receipt or a certified copy thereof or unless a bond shall have been filed as prescribed by section 91-4419.

**History:** En. Sec. 5, Ch. 65, L. 1923; amd. Sec. 1, Ch. 16, L. 1951; amd. Sec. 1, Ch. 99, L. 1965; amd. Sec. 1, Ch. 34, L. 1971.

#### Amendments

The 1965 amendment inserted "whether said death occurred before or after the effective date of this act" in the first paragraph.

The 1971 amendment rewrote the second paragraph to provide for payment to

the state board of equalization, to provide for quintuplicate instead of triplicate receipts from the county treasurer, and to revise the distribution of copies of the receipts. For previous text, see parent volume.

#### Effective Date

Section 2 of Ch. 34, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 18, 1971.

**91-4416. (10400.6) Discount—interest.** If such tax is paid within eighteen (18) months from the accruing thereof, a discount of five per cent (5%) shall be allowed and deducted therefrom. The deduction of this discount of five per cent (5%) shall be accomplished by paying within the eighteen (18) month period from the date that the tax accrues an amount equal to ninety-five per cent (95%) of the total tax declared due by the person making payment. If such tax is not paid within eighteen (18) months from the accruing thereof, interest shall be charged and collected thereon at the rate of ten per cent (10%) per annum from the time the tax accrued; unless by reason of claims made upon the estate, necessary litigation or other unavoidable cause of delay, such tax shall not be determined and paid as herein provided, in which case interest at the rate of six per cent (6%) shall be charged upon such tax from the accrual thereof until the cause of such delay is removed, after which ten per cent (10%) shall be charged, provided that litigation to defeat the payment of the tax shall not be considered necessary litigation. In all

cases when a bond shall be given under the provisions of section 91-4419, interest shall be charged at the rate of six per cent (6%) after one (1) year from the date of death, until the date of payment thereof.

**History:** En. Sec. 6, Ch. 65, L. 1923;      **Amendments**  
amd. Sec. 1, Ch. 15, L. 1967.

The 1967 amendment inserted the figures in parentheses and added the present second sentence.

**91-4417. (10400.7) Powers of representative in collection and payment of tax—collection from legatees or distributees.** Every executor, administrator or trustee shall have full power to sell so much of the property of the decedent as will enable him to pay such tax in the same manner as he might be entitled by law to do for the payment of the debts of the testator or intestate. Any such administrator, executor, or trustee, having in charge or in trust any legacy or property for distribution, subject to such tax, shall deduct the tax therefrom; and within thirty days therefrom shall pay over the same to the county treasurer, as herein provided. If such legacy or property be not in money, he shall collect the tax thereon upon the appraised value thereof, from the person entitled thereto. He shall not deliver or be compelled to deliver any specific legacy or property subject to tax under this law, to any person until he shall have collected the tax thereon. If any such legacy shall be charged upon or payable out of real property, the heir or devisee shall deduct such tax therefrom and pay it to the administrator, executor, or trustee, and the tax shall remain a lien or charge on such real property for the period provided in section 91-4415, and the payment thereof shall be enforced by the executor, administrator, or trustee in the same manner that payment of the legacy might be enforced, or by the attorney general under section 91-4440. If any such legacy shall be given in money to any such person for a limited period, the administrator, executor, or trustee shall retain the tax upon the whole amount, but if it be not in money, he shall make application to the court having jurisdiction of an accounting by him to make an apportionment if the case require it, of the sum to be paid into the hands of such legatees, and for such further order relative thereto as the case may require.

**History:** En. Sec. 7, Ch. 65, L. 1923;      **Amendment**  
amd. Sec. 2, Ch. 99, L. 1965.

The 1965 amendment substituted "for the period provided in section 91-4415" for "until paid" following "charge on such real property" in the fifth sentence.

**91-4418. (10400.8) Refunding of tax—when authorized—manner of refunding—advance payment of tax for relief from penalty and interest.** If any debt shall be proved against the estate of the decedent, after the payment of any legacy or distributive share thereof, from which any such tax has been deducted, or upon which it has been paid by the person entitled to such legacy or distributive share and such person is required by the order of the district court having jurisdiction of the tax so deducted or paid, to refund the amount of such debts or any part thereof, an equitable proportion thereof shall be repaid to such person by the executor,

administrator or trustee, if the said tax has not been paid to the county treasurer or state treasurer, or by them, in the proper proportionate shares, if it has been so paid.

Any person from whom such tax is or may be due may make an estimate of and pay the same to the clerk of court, who shall receipt therefor, at any time before the same is determined by the court, and shall thereupon be relieved from any interest or penalty upon the amount so paid in the same manner as if the tax were then determined. In the event the person making payment has done so in accordance with the provisions of section 91-4416, pertaining to the allowance of a five per cent (5%) discount, the person making payment shall be relieved from any interest or penalty and shall be allowed the five per cent (5%) discount upon the amount which he so declared due as his inheritance tax liability. The tax may be declared to be due by the filing with the clerk of court of a statement of such declaration or by paying the amount estimated by the taxpayer to be due. The money shall be paid to the clerk of the district court who must deposit same with the county treasurer. The county treasurer shall include such collections in the next payment he makes to the state board of equalization pursuant to section 91-4450. As soon as the correct amount of inheritance tax has been determined, any excess so paid shall be refunded to the person so paying or entitled thereto by the state board of equalization based upon the filing of a properly documented claim by the clerk of court.

**History:** En. Sec. 8, Ch. 65, L. 1923; amd. Sec. 1, Ch. 47, L. 1935; amd. Sec. 7, Ch. 126, L. 1963; amd. Sec. 2, Ch. 15, L. 1967; amd. Sec. 1, Ch. 36, L. 1971.

#### Amendments

The 1967 amendment inserted the second and third sentences in the second paragraph.

The 1971 amendment deleted "for credit to the clerk of the district court's deposit or trust fund until the correct amount of the tax has been determined" from the end of the fourth sentence of the second paragraph; inserted the fifth sentence in the second paragraph; substituted "by the

state board of equalization based upon the filing of a properly documented claim by the clerk of court" at the end of the section for "by such clerk of court out of said trust fund"; and deleted "and the county treasurer shall receipt for the amount of the inheritance tax so determined by the court" from the end of the section.

#### Effective Date

Section 3 of Ch. 15, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 3, 1967.

**91-4432. (10400.22) Appraisal at clear market value at time of death, etc.**

#### References

In re Hess' Estate, 145 M 552, 403 P 2d 748.

**91-4437. (10400.27) Order determining tax—contents.** Upon the determination by the district court of the value of any estate which is taxable under the inheritance tax laws, and of the tax to which it is liable, an order shall be entered by the court determining the same, which order shall include a statement of (a) the date of death of the decedent, (b) the gross value of the real and personal property of such estate, stating the principal items thereof, (c) the deductions therefrom allowed by the court, (d) the names and relationship of the persons entitled to receive the same, with the amount received by each, (e) the rates and amounts



of inheritance tax for which each such person is liable, and the total amount of tax to be paid, (f) a statement of the amount of interest or penalty due, if any. Such order shall be substantially in the form prescribed by the state board of equalization. A copy of the same shall be delivered or mailed to the county treasurer, the administrator or executor, and the state board of equalization, and no final judgment shall be entered in such estates until due proof is filed with the court that such copies have been so delivered or mailed, and receipts are filed with such court showing the payment of all such taxes, or proof is filed showing that the bond authorized by section 91-4419 has been given.

**History:** En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; amd. Sec. 1, Ch. 161, L. 1971.

#### Amendments

The 1971 amendment deleted "the state treasurer" after "the county treasurer" in the third sentence.

**91-4450. (10400.40) Monthly reports of county treasurer—payment of collections to state board of equalization—interest on unpaid amounts.** On or before the fifth day of each month each county treasurer shall make a report under oath to the state board of equalization listing all payments received by him under the inheritance tax laws, during the preceding month, and stating for what estate, by whom and when paid. The form of such report shall be prescribed by the state board of equalization. He shall at the same time pay the state board of equalization all the payments received by him under the inheritance tax laws and not previously paid to the state board of equalization, and for all such payments collected by him and not paid to the state board of equalization within five days from the time herein required, he shall pay interest at the rate of ten per cent (10%) per annum.

**History:** En. Sec. 19, Ch. 65, L. 1923; amd. Sec. 7, Ch. 150, L. 1925; amd. Sec. 2, Ch. 36, L. 1971.

#### Amendments

The 1971 amendment substantially rewrote this section. For former text, see parent volume.

#### Effective Dates.

Section 3 of Ch. 36, Laws 1971 read

"The change in reporting and remittance of payments received as provided in section 2 is effective for such payments received, or on hand, on or after April 1, 1971. The first report and remittance based on the change is due by May 5, 1971."

Section 4 of Ch. 36, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 18, 1971.

## CHAPTER 45—GUARDIAN AND WARD

### 91-4515. (5878) Rules of awarding custody of minors.

#### Death of Both Parents

In a custody dispute between maternal grandparents and father of children whose mother died prior to action, where father to whom children were awarded also died pending hearing on motion for new trial, maternal grandparents who had filed motion for new trial and who had already been determined by court to be fit and proper persons for custody of children would have been entitled to custody without new trial but for second wife of

deceased husband who was entitled to hearing on petition to intervene as party to whom deceased father wished children to go. State ex rel. Ross v. District Court, Fourth Judicial Dist., 150 M 233, 433 P 2d 778.

#### Welfare of Child Paramount

District court did not abuse its discretion in awarding custody of two younger children to father, who had moved to California, since children had a good home

with their father and paternal grandparents, were well cared for and happy, were given more than adequate educational and religious training and had lived with their father for more than five years.

Anderson v. Anderson, 145 M 244, 400 P 2d 632.

#### References

Hurly v. Hurly, 147 M 118, 411 P 2d 359.

### CHAPTER 48—GUARDIANSHIP OF INCOMPETENT VETERANS, MINORS, AND OTHER BENEFICIARIES OF THE VETERANS ADMINISTRATION

Section 91-4812. Compensation of guardians.

**91-4812. Compensation of guardians.** Compensation payable to guardians shall be based upon services rendered and shall not exceed five per cent (5%) of the amount of moneys received during the period covered by the account, or a minimum of one hundred dollars (\$100) whichever is the greater, the decision as to such amount of compensation, however, to be at the discretion of the district court. In the event of extraordinary services by any guardian, the court, upon petition and hearing thereon may authorize reasonable additional compensation therefor. A copy of the petition and notice of hearing thereon shall be given the proper office of the veterans' administration in the manner provided in the case of hearing on a guardian's account or other pleading. No commission or compensation shall be allowed on the moneys or other assets received from a prior guardian nor upon the amount received from liquidation of loans or other investments.

**History:** En. Sec. 12, Ch. 58, L. 1943; amd. Sec. 1, Ch. 25, L. 1969.

#### Amendments

The 1969 amendment added "or a minimum of one hundred dollars \* \* \* district court" to the first sentence.

### CHAPTER 49—GUARDIAN'S POWERS AND DUTIES

**91-4906. (10422) Guardian to return inventory of estate of ward, etc.**

#### Failure To File Inventory

Court on own motion could require guardian to appear and account for funds in his possession, where he neglected to file inventory and appraisal within

three-month period as required by statute, notwithstanding that parties to action were still before court. State ex rel. Ross v. District Court, Fourth Judicial Dist., 150 M 233, 433 P 2d 778.

### CHAPTER 50—SALE OF PROPERTY BY GUARDIANS—INVESTMENT OF PROCEEDS

Section 91-5015. Conditions of sales of real estate of wards—bond and mortgage to be given for deferred payments.

**91-5015. (10442) Conditions of sales of real estate of wards—bond and mortgage to be given for deferred payments.** All sales of real estate of wards, where the sales price is five thousand dollars (\$5,000) or less, must be for cash, or for part cash and part deferred payments, the credit in no case to exceed three years from the date of sale, as in the discretion of the court or judge is most beneficial to the ward. For sales of real estate of wards where the sales price exceeds five thousand dollars (\$5,000), deferred payments may be extended not to exceed

twenty (20) years. Guardians making sales must demand and receive from the purchasers, in case of deferred payments, notes and mortgage or trust indenture or contract for deed; on the real estate sold, with such additional security as the court or judge deems necessary and sufficient to secure the prompt payment of the amounts so deferred, and the interest thereon.

**History:** En. Sec. 390, p. 340, L. 1877; re-en. Sec. 390, 2nd Div. Rev. Stat. 1879; re-en. Sec. 390, 2nd Div. Comp. Stat. 1887; re-en. Sec. 3014, C. Civ. Proc. 1895; re-en. Sec. 7794, Rev. C. 1907; re-en. Sec. 10442, R. C. M. 1921; amd. Sec. 1, Ch. 27, L. 1969. Cal. C. Civ. Proc. Sec. 1791.

#### Amendments

The 1969 amendment inserted "where the sales price is five thousand dollars (\$5,000) or less" after "real estate of

wards" in the first sentence; inserted the second sentence; and, in the third sentence, deleted "a" before "mortgage" and inserted "or trust indenture or contract for deed" after "mortgage."

#### Effective Date

Section 2 of Ch. 27, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 13, 1969.

### CHAPTER 52—GUARDIANSHIP—GENERAL AND MISCELLANEOUS PROVISIONS

#### 91-5201. (10455) Examination of persons suspected of defrauding wards, etc.

##### Examination of Administrator

In a proceeding for removal of administrator for misappropriation of funds of estate, administrator could be examined as adverse witness as provided in Rule 43, and Rule 81, excluding statutory proceed-

ings from Rules of Civil Procedure to extent that statutory proceedings are contrary to Rules, does not bar examination of administrator as adverse witness. In re Estate & Guardianship of Wyman, 149 M 525, 429 P 2d 629.

### CHAPTER 53—PROCEEDINGS IN LIEU OF PROBATE—ESTATES OF LESS THAN TEN THOUSAND DOLLARS

- Section 91-5301. Estate may be set aside to surviving spouse or minor child—net value of estate must be less than ten thousand dollars.
- 91-5302. Value of joint property and property transferred during lifetime giving rise to tax liability—included in determination of net value of estate.
- 91-5303. Termination of life estate or joint tenancy—combined with proceeding to set aside property.
- 91-5304. Petition to set aside estate—requirements.
- 91-5305. Notice—contents.
- 91-5306. Notice—time and manner of giving.
- 91-5307. Special appraiser—duties, powers and compensation.
- 91-5308. Court decree—conditions—assignment to surviving spouse or minor child—title vested—subject to encumbrances—exemptions limiting assignment.
- 91-5309. Jurisdiction of court cannot be collaterally attacked when decree final in the absence of fraud.
- 91-5310. When estate shall be administered in the usual manner.
- 91-5311. Pending actions excepted.
- 91-5312. Existing statutes not repealed.

**91-5301. Estate may be set aside to surviving spouse or minor child—net value of estate must be less than ten thousand dollars.** If a resident decedent leaves a surviving spouse or minor child or minor children, and the net value of the whole estate, over and above all liens and encumbrances at the date of death and over and above the value of any homestead



interest set apart out of decedent's estate under chapter 25, Title 91, R. C. M. 1947, does not exceed the sum of ten thousand dollars (\$10,000), the same may be set aside to the surviving spouse, if there be one, and if there be none, then to the minor child or minor children of the decedent.

**History:** En. Sec. 1, Ch. 51, L. 1969.      **Title of Act**

An act to provide for summary proceedings in lieu of probate for specified estates of less than ten thousand dollars.

**91-5302. Value of joint property and property transferred during lifetime giving rise to tax liability—included in determination of net value of estate.** The value of decedent's interest in any joint property at the time of his death, which might give rise to tax liability under section 91-4405, R. C. M. 1947, and the value of any property transferred by the decedent during his lifetime which might give rise to tax liability under section 91-4402, R. C. M. 1947, shall be included to determine if the net value of the whole estate of the decedent does exceed the sum of ten thousand dollars (\$10,000) as provided in the preceding section.

**History:** En. Sec. 2, Ch. 51, L. 1969.

**91-5303. Termination of life estate or joint tenancy—combined with proceeding to set aside property.** An action or proceedings to terminate a life estate or joint tenancy may be combined with an action or proceedings to set aside property under this act, where otherwise proper under the provisions of this act, and of section 91-4321, R. C. M. 1947.

**History:** En. Sec. 3, Ch. 51, L. 1969.

**91-5304. Petition to set aside estate—requirements.** Allegations showing that this act is applicable together with a prayer that the estate be set aside as provided in this act may be included alternately in the petition for probate of the will, or for letters of administration; or such allegations and prayer may be presented by separate petition filed by the personal representative of the decedent, or the surviving spouse, or the guardian of the minor child or children, filed at any time before the hearing on the petition for the probate of the will or for letters of administration or after the filing of the inventory. In all cases the petition must be verified; and the allegation shall include a specific description and an estimate of the value of all of the decedent's property, a list of all liens and encumbrances at the date of death, and a designation of any property as to which a homestead is or may be set aside.

**History:** En. Sec. 4, Ch. 51, L. 1969.

**91-5305. Notice—contents.** If the allegations and prayer as provided in the preceding section are included in the petition for probate of the will or for letters of administration, the notice of hearing shall include a statement that a prayer for setting aside the estate to the surviving spouse or the minor child or minor children as the case may be, is included in the petition.

**History:** En. Sec. 5, Ch. 51, L. 1969.

**91-5306. Notice—time and manner of giving.** If a separate petition is filed under the provisions of this act, notice thereof shall be given in the manner and for the time required for a petition for letters of administration. If a separate petition for probate of the will of the decedent, as for letters of administration of his estate, be filed, such petitions shall be heard at the same time as a petition under this act, and for that purpose the court may continue the hearing on any such petition, so that at least ten (10) days notice is given for each such petition pending before the court.

**History:** En. Sec. 6, Ch. 51, L. 1969.

**91-5307. Special appraiser—duties, powers and compensation.** Upon the filing of any petition provided for in this act, unless the whole estate consists of money, the court shall forthwith appoint a special appraiser as provided in section 91-4427, R. C. M. 1947, who shall have the duty, powers and compensation provided by law with respect to the property described in such petition.

**History:** En. Sec. 7, Ch. 51, L. 1969.

**91-5308. Court decree—conditions—assignment to surviving spouse or minor child—title vested—subject to encumbrances—exemptions limiting assignment.** If upon the hearing of any petition provided for by this act, the court finds that the net value of the estate of the decedent, determined as provided in this act, does not exceed the sum of ten thousand dollars (\$10,000), as of the date of death of the decedent, and that the expenses of the last illness, funeral and burial charges and expenses of administration and all other creditors have been paid, it shall, by decree for that purpose, assign such estate to the surviving spouse; if there be no such surviving spouse, at the time of such decree, then to such child or children as may then be minors; all subject to whatever mortgages, liens or encumbrances upon such estate there may be at the time of the death of the decedent. The title to such estate so assigned or set aside shall vest absolutely in the person or persons named in the decree, subject to mortgages, liens or encumbrances as here provided, and there must be no further proceedings in the administration, unless further estate be discovered. But no surviving spouse or minor child shall be entitled to such an assignment where the net value of the whole estate transferring to them from the decedent including the value of decedent's interest in any joint property owned by the decedent at the time of his death, and the value of any property transferred by the decedent in contemplation of decedent's death, exceeds, as to such spouse, or such minor child, respectively, the exemptions provided for them in section 91-4414, R. C. M. 1947.

**History:** En. Sec. 8, Ch. 51, L. 1969.

**91-5309. Jurisdiction of court cannot be collaterally attacked when decree final in the absence of fraud.** In the absence of fraud in the procurement, a decree assigning an estate pursuant to the provisions of this act, when it becomes final, is a conclusive determination of the juris-

diction of the court, except when based upon an erroneous assumption of death, and cannot be collaterally attacked.

History: En. Sec. 9, Ch. 51, L. 1969.

**91-5310. When estate shall be administered in the usual manner.** If the court finds that the net value of the estate determined as provided in this act exceeds the sum of ten thousand dollars (\$10,000) or that the surviving spouse, or minor child or minor children, are not entitled to an assignment under this act, or that there is neither a surviving spouse or surviving minor child of the decedent, the petition to set aside property of the decedent shall be denied, and the estate shall be then administered in the usual manner.

History: En. Sec. 10, Ch. 51, L. 1969.

**91-5311. Pending actions excepted.** This act shall not apply to estates of decedents filed or pending in any court prior to the effective date of this act.

History: En. Sec. 11, Ch. 51, L. 1969.

**Compiler's Notes**

This act became effective July 1, 1969.

**91-5312. Existing statutes not repealed.** This act shall not be construed to repeal any other existing statutes relating to probate proceedings.

History: En. Sec. 12, Ch. 51, L. 1969.



## TITLE 92—WORKMEN'S COMPENSATION ACT

- Chapter 1. Industrial accident board—creation and powers, 92-101, 92-104, 92-111, 92-118.
2. Defenses—election to come under act, 92-204, 92-206, 92-208.
  4. Meaning of words employed in act, 92-410, 92-411, 92-413, 92-417, 92-418, 92-422, 92-438.
  6. Claims—liability for injury under different plans of act, 92-614.
  7. Compensation for various injuries—amount—payment, 92-701 to 92-704, 92-706, 92-707, 92-709, 92-710.
  8. Miscellaneous regulations—powers of board—rehearings and appeals, 92-827, 92-834.
  9. Compensation plan No. 1, 92-902.
  10. Compensation plan No. 2, 92-1004, 92-1005.
  11. Compensation plan No. 3, 92-1101, 92-1103 to 92-1105.1, 92-1108, 92-1121.
  12. Safety provisions, Repealed—Sections 6 to 8, Chapter 176, Laws of 1957; Section 30, Chapter 341, Laws of 1969.
  13. Occupational Disease Act, 92-1303 to 92-1305, 92-1310 to 92-1313, 92-1315, 92-1315.1, 92-1321.
  14. Rehabilitation of injured workmen, 92-1403.

### CHAPTER 1—INDUSTRIAL ACCIDENT BOARD— CREATION AND POWERS

- Section 92-101. Name of act—what each part to contain.
- 92-104. Industrial accident board—compensation—terms and salaries.
- 92-111. Office and furnishings—quarters.
- 92-118. Reports and bulletins which may be published.

**92-101. (2816) Name of act—what each part to contain.** This act shall be known and may be cited as the Workmen's Compensation Act. Part I (sections 92-101 to 92-843) shall contain those sections which have a general application to the whole of the act, and may be referred to as the "general provisions"; part II (sections 92-901 to 92-908) shall contain those sections which refer to compensation plan number one; part III (sections 92-1001 to 92-1012) shall contain those sections which refer to compensation plan number two; part IV (sections 92-1101 to 92-1123) shall contain those sections which refer to compensation plan number three.

**History:** En. Sec. 1, Ch. 96, L. 1915; re-en. Sec. 2816, R. C. M. 1921; amd. Sec. 29, Ch. 341, L. 1969.

#### Compiler's Notes

Sections 92-106 and 92-107, contained in the reference to section 92-101 to 92-843 in this section, were repealed by Sec. 51, Ch. 177, Laws 1965.

Sections 92-1106 and 92-1107, contained in the reference to sections 92-1101 to 92-1123 in this section, were repealed by Sec. 3, Ch. 233, Laws 1969.

#### Amendments

The 1969 amendment deleted "part V

(sections 92-1201 to 92-1222) shall contain those sections which may be referred to as the "safety provisions" from the end of the section.

#### Repealing Clause

Section 30 of Ch. 341, Laws 1969 read "Sections 41-1701 through 41-1707, 92-1201 through 92-1210 and 92-1214 through 92-1222, R. C. M. 1947, are repealed."

#### References

Benoit v. Murphy Corp., 143 M 463, 391 P 2d 350.

**92-104. (2819) Industrial accident board—compensation—terms and salaries.** There is hereby created a board to consist of three (3) members. The commissioner of labor and industry shall be one (1) member, the director of the bureau of vocational rehabilitation shall be one (1) member, and one (1) member shall be appointed by the governor, by and with the consent of the senate. The board shall be known as the industrial accident board and shall have the powers, duties, and functions herein-after conferred. The term of office of the appointed member of the board shall be four (4) years and until his successor shall have been appointed and confirmed. He shall receive an annual salary in such amount as may be specified by the legislative assembly in the appropriation to the industrial accident board, payable monthly and shall be chairman of the board. If the legislative assembly does not specify the maximum salary for the chairman of the board, it shall be fixed by the board after approval by the board of examiners. Before approving any salary increase, the board of examiners shall review the salaries of comparable positions in Montana state government, other states, and private industry. The board shall elect one (1) of their own number as treasurer of the board.

**History:** En. Sec. 2, Ch. 96, L. 1915; amd. Sec. 1, Ch. 95, L. 1919; amd. Sec. 1, Ch. 254, L. 1921; re-en. Sec. 2819, R. C. M. 1921; amd. Sec. 1, Ch. 161, L. 1953; amd. Sec. 1, Ch. 231, L. 1959; amd. Sec. 1, Ch. 148, L. 1961; amd. Sec. 9, Ch. 225, L. 1963; amd. Sec. 15, Ch. 237, L. 1967.

#### Amendments

The 1967 amendment substituted "in

such amount \* \* \* to the industrial accident board" for "of not more than ten thousand dollars (\$10,000)" in the fifth sentence; and inserted the sixth and seventh sentences.

#### Cross-References

Board abolished and functions transferred, sec. 82A-1005(1).

### 92-106, 92-107. (2821, 2822) Repealed.

#### Repeal

These sections (Sec. 2, Ch. 96, L. 1915; Sec. 1, Ch. 81, L. 1941; Sec. 1, Ch. 235, L. 1947), relating to bonds of member and employees of the industrial accident com-

mission, were repealed by Sec. 51, Ch. 177, Laws 1965. For new provisions relating to bonds for state officers and employees, see sec. 6-105 et seq.

**92-111. (2826) Office and furnishings—quarters.** The board shall keep its principal office in the capital of the state. It may rent or lease quarters for the conduct of its administrative duties.

**History:** En. Sec. 2, Ch. 96, L. 1915; re-en. Sec. 2826, R. C. M. 1921; amd. Sec. 1, Ch. 234, L. 1969.

#### Amendments

The 1969 amendment deleted "and shall be provided with suitable rooms,

necessary office furniture, stationery, and other supplies" from the end of the first sentence and substituted the present second sentence for one reading, "For the purpose of holding sessions in other places the board shall have power to rent temporary quarters."

**92-118. (2833) Reports and bulletins which may be published.** The board shall have the power and authority to publish and distribute at its discretion from time to time, in addition to its report required by section 2 [82-4002] of this act, such further reports and bulletins covering its operations, proceedings, and matters relative to its work as it may deem advisable.

History: En. Sec. 2, Ch. 96, L. 1915;  
re-en. Sec. 2833, R. C. M. 1921; amd. Sec.  
41, Ch. 93, L. 1969.

#### Amendments

The 1969 amendment substituted the reference to the reporting requirements of section 82-4002 for former reference to annual reports.

### CHAPTER 2—DEFENSES—ELECTION TO COME UNDER ACT

- Section 92-204. Election of employer and employee to come under act—action against third party causing injury.  
92-206. Compensation plan No. 3 exclusive, etc., when a public corporation is the employer.  
92-208. Employees bound by act—election.

**92-204. (2839) Election of employer and employee to come under act—action against third party causing injury.** Where both the employer and employee have elected to come under this act, the provisions of this act shall be exclusive, and such election shall be held to be a surrender by such employer and the servants, and employees of such employer and such employee, as among themselves, of their right to any other method, form or kind of compensation, or determination thereof, or to any other compensation, or kind of determination thereof, or cause of action, action at law, suit in equity, or statutory or common-law right or remedy, or proceeding whatever, for or on account of any personal injury to or death of such employee, except as such rights may be hereinafter specifically granted; and such election shall bind the employee himself, and in case of death shall bind his personal representative, and all persons having any right or claim to compensation for his injury or death, as well as the employer, and the servants and employees of such employer, and those conducting his business during liquidation, bankruptcy or insolvency. Provided, that whenever such employee shall receive an injury while performing the duties of his employment and such injury or injuries, so received by such employee, are caused by the act or omission of some persons or corporations other than his employer, or the servants or employees of his employer, then such employee, or in case of his death his heirs or personal representatives, shall, in addition to the right to receive compensation under the Workmen's Compensation Act, have a right to prosecute any cause of action he may have for damages against such persons or corporations, causing such injury. Further provided, that whenever such employee shall receive an injury while performing the duties of his employment and such injury or injuries, so received by such employee, are caused by the intentional and malicious act or omission of a servant or employee of his employer, then such employee, or in case of his death, his heirs or personal representatives, shall, in addition to the right to receive compensation under the Workmen's Compensation Act, have a right to prosecute any cause of action he may have for damages against such servants or employees of his employer, causing such injury. In the event said employee shall prosecute an action for damages for or on account of such injuries so received, he shall not be deprived of his right to receive compensation but such compensation shall be received by him in addition to and inde-



pendent of his right to bring action for such damages, provided, that in the event said employee, or in case of his death, his personal representative, shall bring such action, then the employer or insurance carrier paying such compensation shall be subrogated only to the extent of either one-half ( $\frac{1}{2}$ ) of the gross amount paid at time of bringing action and the amount eventually to be awarded to such employee as compensation under the workmen's compensation law or one-half ( $\frac{1}{2}$ ) of the amount recovered and paid to such employee in settlement of, or by judgment in said action, whichever is the lesser amount. All expense of prosecuting such action shall be borne by the employee, or if the employee shall fail to bring such action or make settlement of his cause of action within six (6) months from the time such injury is received, the employer or insurance carrier who pays such compensation may thereafter bring such action and thus become entitled to all of the amount received from the prosecution of such action up to the amount paid the employee under the Workmen's Compensation Act, and all over that amount shall be paid to the employee. In the event that the amount of compensation payable under this act shall not have been fully determined at the time such employee shall receive settlement of his action, prosecuted as aforesaid, then the industrial accident board shall determine what proportion of such settlement the insurance carrier would be entitled to receive under its right of subrogation and such finding of the board shall be conclusive. Such employer or insurance carrier shall have a lien on such cause of action for one-half ( $\frac{1}{2}$ ) of the amount paid to such employee as compensation under the Workmen's Compensation Act or one-half ( $\frac{1}{2}$ ) of the amount recovered and paid to such employee in settlement of, or by judgment in said action, whichever is the lesser amount, which shall be a first lien thereon.

**History:** En. Sec. 3, Ch. 96, L. 1915; re-en. Sec. 2839, R. C. M. 1921; amd. Sec. 1, Ch. 138, L. 1933; amd. Sec. 1, Ch. 230, L. 1943; amd. Sec. 2, Ch. 235, L. 1947; amd. Sec. 1, Ch. 270, L. 1969.

#### Amendments

The 1969 amendment, in the first sentence, inserted "and the servants, and employees of such employer" after "employer" in two places and substituted "among themselves" for "between themselves" before "of their right to any other method"; in the second sentence, inserted "or the servants or employees of his employer" after "employer"; and inserted the present third sentence.

#### Exclusive Remedy

Where employee was injured while performing work assigned to him under contract between his employer and second company, failure of second company to file timely injury report with industrial accident board prevented it from invoking exclusive jurisdiction in board as "exclusive remedy" after employee filed civil suit in district court. *State ex rel. Broes-*

*der v. Industrial Accident Board*, 154 M 178, 461 P 2d 456.

Injured employee receiving workmen's compensation benefits was barred from seeking damages for same injuries in negligence action against coemployee. *Madison v. Pierce*, — M —, 478 P 2d 860.

Employee, having elected to be bound by workmen's compensation law, and being compensated thereunder, was not entitled to maintain an action against employer for negligence, notwithstanding contention that employer's actions were willful and therefore not within statute barring employee's action against employer for common-law negligence; employee was not third-party beneficiary of safety clauses in contract between employer and United States and could not maintain action against employer for common-law negligence in absence of express promise in contract between employer and United States to pay damages to employee for employer's negligence. *Hensley v. United States*, 279 F Supp 5'8.

#### Joint Venture As Employer

Individual members of joint venture are

"employers" within act and as such are immune from tort actions for death of employees of joint venture. *Hamman v. United States*, 267 F Supp 420.

#### Right To Sue Third Party

Provision in this section for exclusive remedy under this act does not preclude a defendant who is liable at common law to employee from seeking indemnity from plaintiff's employer as third-party defendant on an indemnity agreement. *DeShaw v. Johnson*, — M —, 472 P 2d 298.

Plaintiff, who received workmen's compensation benefits for injuries sustained while in the employ of independent con-

tractor, was denied claim against the landowners under proviso of this section, since they exercised no control over work area. *Baird v. Chokatos*, — M —, 473 P 2d 547.

Employee of joint venture was entitled to sue engineering firm in relation of independent contractor as to joint venture for engineering firm's negligence causing injury to employee under that portion of statute (prior to 1969 amendment) giving right of action against third parties when injuries are caused by act of some person other than employer. *Hamman v. United States*, 267 F Supp 420.

**92-206. (2840) Compensation plan No. 3 exclusive, etc., when a public corporation is the employer.** Where a public corporation is the employer, the terms, conditions, and provisions of compensation plan No. 3 shall be exclusive, compulsory, and obligatory upon both employer and employee. Any sums necessary to be paid under the provisions of this act by any public corporation shall be considered to be ordinary and necessary expense of such corporation, and the governing body of such public corporation shall make appropriation of and pay such sums, into the accident or administration fund, as the case may be, at the time and in the manner provided for in this act, notwithstanding that such governing body may have failed to anticipate such ordinary and necessary expense in any budget, estimate of expenses, appropriations, ordinances, or otherwise. Whenever a contractor is engaged as an employer in the performance of contract work for a public corporation, such employer must elect to be bound by the terms, conditions and provisions of either compensation plan No. 2 or compensation plan No. 3, and the terms, conditions and provisions of the plan chosen shall be compulsory and obligatory upon both employer and employee. Whenever any public corporation neglects or refuses to file with the industrial accident board monthly payroll report of its employees, the board is hereby authorized and empowered to levy an arbitrary assessment upon such public corporation in an amount of twenty-five dollars for each such assessment, which assessments shall be collected in the manner provided in this act for the collection of assessments.

**History:** En. Sec. 3, Ch. 96, L. 1915; amd. Sec. 1, Ch. 100, L. 1919; amd. Sec. 1, Ch. 196, L. 1921; re-en. Sec. 2840, R. C. M. 1921; amd. Sec. 1, Ch. 410, L. 1971.

#### Amendments

The 1971 amendment deleted "or any

contractor engaged in the performance of contract work for such public corporation" after "is the employer" in the first sentence; and completely rewrote the third sentence.

**92-207. (2841) Employers engaged in hazardous industries, etc.**

#### References

*Simons v. Fisher*, 146 M 526, 409 P 2d 449.

**92-208. (2842) Employees bound by act—election.** Every employee whose employer is bound by the provisions of this act shall become sub-

ject to and be bound by the provisions of that plan of compensation which shall have been adopted by his employer except, that pursuant to such rules and regulations as the board shall from time to time promulgate, and subject in all cases to the approval of the board, officers of private corporations may elect not to be bound as employees under the act by a written notice in the form provided by the board, served in the following manner:

1. to 3. \* \* \* [Same as parent volume.]

History: En. Sec. 3, Ch. 96, L. 1915; re-en. Sec. 2842, R. C. M. 1921; amd. Sec. 1, Ch. 95, L. 1963; amd. Sec. 1, Ch. 145, L. 1971.

pursuant to such rules and regulations as the board shall from time to time promulgate, and subject in all cases to the approval of the board" in the preliminary paragraph.

#### Amendments

The 1971 amendment inserted "that

**92-211. (2846) Act applies to all inherently hazardous occupations, etc.**

#### References

Simons v. Fisher, 146 M 526, 409 P 2d 449.

### CHAPTER 4—MEANING OF WORDS EMPLOYED IN ACT

**Section 92-410. Employer defined.**

92-411. Employee and workman defined.

92-413. Beneficiary defined.

92-417. Child defined, to include whom.

92-418. Injury or injured defined.

92-422. Week defined.

92-438. Independent contractor defined.

**92-410. (2862) Employer defined.** "Employer" means the state and each county, city and county, city school district, irrigation district, all other districts established by law and all public corporations and quasi-public corporations and public agencies therein and every person, every prime contractor and every independent contractor, firm, voluntary associations and private corporation, including any public service corporation and including an independent contractor, who has any person in service, in hazardous employment, under any appointment or contract of hire, expressed or implied, oral or written, and the legal representative of any deceased employer or the receiver or trustee thereof.

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2862, R. C. M. 1921; amd. Sec. 2, Ch. 121, L. 1925; amd. Sec. 1, Ch. 50, L. 1965.

#### Amendment

The 1965 amendment inserted "every prime contractor and every independent contractor" after "every person."

#### Joint Ventures

Individual members of joint venture are "employers" within meaning of act and as such are immune from tort actions for death of employees of joint venture. Hamman v. United States, 267 F Supp 420.

**92-411. (2863) Employee and workman defined.** "Employee" and "workmen" are used synonymously and mean every person in this state, including a contractor other than an "independent contractor" who is in



the service of an employer as defined by the preceding section, under any appointment or contract of hire, expressed or implied, oral or written, including aliens and also including minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations while rendering actual service for such corporations for pay, including city and town firemen, highway patrolmen, police officers, county sheriffs, deputy sheriffs, constables, truant officers and all peace officers, also all public officers and their deputies, assistants and employees, but excluding any person whose employment is both casual and not in the courses of the trade, business, profession or occupation of his employer, unless such employer has elected to be bound by the provisions of the compensation law, in which case all employees are included, whether their employment is casual or otherwise, and also excluding any employee engaged in household or domestic service.

"Employee" also means a recipient of general relief who is performing work for a county of this state under the provisions of section 71-307, any juvenile performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program, and any person receiving vocational rehabilitation training, or other on-the-job training under any state or federal vocational training program, whether or not under any appointment or contract of hire with an "employer" as defined in this title, and whether or not receiving payment from a third party.

If the employer is a partnership, or sole proprietorship, such employer may elect to include as an "employee" within the provisions of this act, any member of such partnership, or the owner of the sole proprietorship, devoting full time to the partnership or proprietorship business. In the event of such election, the employer must serve upon the employer's insurance carrier and the industrial accident board written notice naming the partners and/or sole proprietors to be covered, and no partner or sole proprietor shall be deemed an employee within this act until such notice has been given. For premium rate making the insurance carrier shall assume salary or wage of such electing "employee" to be five hundred dollars (\$500) per month.

**History:** En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2863, R. C. M. 1921; amd. Sec. 3, Ch. 121, L. 1925; amd. Sec. 1, Ch. 139, L. 1931; amd. Sec. 3, Ch. 88, L. 1945; amd. Sec. 1, Ch. 153, L. 1963; amd. Sec. 1, Ch. 308, L. 1971.

#### **Amendments**

The 1971 amendment added the lan-

guage following "section 71-307" in the second paragraph; and added the third paragraph.

#### **Effective Date**

Section 2 of Ch. 308, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 15, 1971.

**92-413. (2865) Beneficiary defined.** "Beneficiary" means and shall include a surviving wife or husband and a surviving child or children under the age of eighteen years, or an unmarried child under the age of twenty-one (21) years who is a full-time student in an accredited school, and an invalid child or invalid children over the age of eighteen years, or if no surviving wife or husband then a surviving child or children under the age of eighteen years and an invalid child or invalid children

over the age of eighteen years; provided, however, that no invalid child over the age of eighteen years shall be considered a beneficiary unless dependent upon the decedent for support at the time of injury.

**History:** En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2865, R. C. M. 1921; amd. Sec. 4, Ch. 121, L. 1925; amd. Sec. 1, Ch. 92, L. 1969.

#### Amendments

The 1969 amendment inserted "or an unmarried child \* \* \* accredited school" after "under the age of eighteen years."

**92-417. (2869) Child defined, to include whom.** "Child" shall include a posthumous child, a dependent stepchild, a child legally adopted prior to the injury, an illegitimate child legitimized prior to the injury.

**History:** En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2869, R. C. M. 1921; amd. Sec. 2, Ch. 92, L. 1969.

#### Amendments

The 1969 amendment inserted "dependent" before "stepchild."

**92-418. (2870) Injury or injured defined.** "Injury" or "injured" means a tangible happening of a traumatic nature from an unexpected cause, or unusual strain, resulting in either external or internal physical harm, and such physical condition as a result therefrom and excluding disease not traceable to injury.

**History:** En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2870, R. C. M. 1921; amd. Sec. 6, Ch. 162, L. 1961; amd. Sec. 6, Ch. 149, L. 1965; amd. Sec. 1, Ch. 270, L. 1967.

#### Amendments

The 1965 amendment made no apparent change. But see *Lupien v. Montana Record Publishing Co.*, 143 M 415, 390 P 2d 455, 457.

The 1967 amendment inserted "or unusual strain" after "an unexpected cause."

#### Repealing Clause

Section 2 of Ch. 270, Laws 1967 repealed all acts and parts of acts in conflict therewith.

#### Effective Date

Section 3 of Ch. 270, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 2, 1967.

#### Aggravation of Pre-existing Condition

Four-year-old back injury aggravated by lifting heavy piece of material on job was not injury within purview of statute since claimant must establish that injury for which he seeks to recover is new injury resulting from unexpected cause. *Phelan v. Vogel*, 148 M 422, 422 P 2d 80.

#### Aneurysm

Workman who suffered aneurysm when right middle cerebral artery ruptured did not suffer compensable injury as defined

in statute in light of evidence that at time of injury, he was engaged in performing ordinary activities of employment which would not cause aneurysm. *Miller v. Sundance Recreation, Inc.*, 151 M 223, 441 P 2d 194.

#### Burden of Proof

Claimant who injured hand and received compensation for such injury was properly denied compensation for alleged "disabling cardiac damage" and "cardiac neurosis" since claimant could produce no substantial evidence to support such claim. *Verdi v. American Smelting & Refining Co.*, 154 M 208, 461 P 2d 845.

#### Heart Attack

Where employee suffered fatal myocardial infarction at work but expert cardiologist testified that the attack was not a result of his employment, recovery was denied even though absolute proof was not possible. *Ness v. Diamond Asphalt Co.*, 143 M 560, 393 P 2d 43.

#### Relationship between Accident and Disability

Evidence of claimant's mental problems existing prior to accident and doctor's testimony that it was speculation that claimant's failure to return to work was caused by accident was sufficient to sustain judgment denying recovery under statute for claimant's failure to establish direct relationship between industrial accident and physical condition after such accident. *Schwartzkopf v. Industrial Accident Board*, 149 M 488, 428 P 2d 468.

**Spinal Cancer**

Workmen's compensation was properly denied where claimant's decedent's death resulted from a spinal cancer that was neither caused by nor contributed to by accident in which decedent fractured his dorsal spine, there being no causal connection between the fracture and the cancerous tumor of the spine which caused death. *Stordahl v. Rush Implement Co.*, 148 M 13, 417 P 2d 95, 98. (Dissenting opinion, 148 M 13, 417 P 2d 95, 99.)

**Unusual Strain**

Evidence that claimant, while in course and scope of employment, picked up heavy tray of dirty dishes from floor and suffered back strain and testimony of doctor that subsequent back condition resulted from unusual strain was sufficient to support claim of accidental injury within meaning of phrase "unusual strain" as used in statute. *Jones v. Bair's Cafes*, 152 M 13, 445 P 2d 923.

**DECISIONS UNDER FORMER LAW****Disease Not Traceable to Injury**

Where claimant was being treated for bursitis prior to time she lifted box which allegedly caused injury to her shoulder, and surgeon who had operated on shoulder admitted only to the "possibility" of a supraspinatus tendon tear, there was insufficient evidence upon which either the industrial accident board or district court could base award. *La Forest v. Safeway Stores, Inc.*, 147 M 431, 414 P 2d 200.

**Unexpected Cause**

Claimant, whose routine job was lifting fifteen-pound blocks, was not entitled to compensation for back injury since strain from lifting blocks was not an injury resulting from an "unexpected cause." *James v. V. K. V. Lumber Co.*, 145 M 466, 401 P 2d 282, distinguished in *Jones v. Bair's Cafes*, 152 M 13, 445 P 2d 923.

**92-422. (2874) Week defined.** "Week" means five (5) working days, but includes Sundays.

**History:** En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2874, R. C. M. 1921; amd. Sec. 1, Ch. 175, L. 1971.

**Amendments**

The 1971 amendment reduced the week from six to five working days.

**References**

*Simons v. C. G. Bennett Lumber Co.*, 146 M 129, 404 P 2d 505.

**92-423. (2875) Wages defined.**

**References**

*Simons v. C. G. Bennett Lumber Co.*,

146 M 129, 404 P 2d 505; *Mahlum v. Broeder*, 147 M 386, 412 P 2d 572.

**92-438. (2890) Independent contractor defined.** "An independent contractor" is one who renders service in the course of an occupation, representing the will of his employer only as the result of his work, and not as to the means by which it is accomplished. But the legal defense of independent contractor shall not bar otherwise compensable industrial accident claims against employers except when such defense is interposed on behalf of a party who has previously required the claimant's immediate employer to come within the Workmen's Compensation Act.

**History:** En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2890, R. C. M. 1921; amd. Sec. 1, Ch. 49, L. 1965.

**Amendment**

The 1965 amendment added the second sentence.

**CHAPTER 6—CLAIMS—LIABILITY FOR INJURY UNDER DIFFERENT PLANS OF ACT**

Section 92-614. Who liable for injuries under the different plans of act and in what amounts, extraterritorial application and reciprocity.



**92-601. (2899) Claims must be presented within what time.****Estoppel to Invoke Statute**

Industrial accident board's dismissal of claimant's workmen's compensation claim was proper where action was not commenced until twenty-three months after expiration of limitation period provided for in this section, and claimant failed to produce evidence which would indicate existence of latent injury or actions which

would estop employer from invoking statute of limitations. *Vetsch v. Helena Transfer & Storage Co.*, 154 M 106, 460 P 2d 757.

**References**

*Stokes v. Delaney & Sons, Inc.*, 143 M 516, 391 P 2d 698; *Meyer v. Noble Drilling, Inc.*, 259 F Supp 110, 112.

**92-608. (2905) Compensation in case of death of employee, etc.****Death from Cause other than Injury**

Clause providing that "if the employee shall die from some cause other than the injury, there shall be no liability for compensation after his death" means that if employee is receiving compensation as result of industrial injury and subsequently dies from causes other than injury, liability for further compensation by way of death benefits or continuing disability benefits is cut off; but statute does not terminate liability for compensation accrued prior to death and unpaid at time of death; thus, compensation for permanent partial disability existing between time of injury and time of death is payable even after death. *Breen v. Industrial Accident Board*, 150 M 463, 436 P 2d 701.

**"Proximate Cause" Defined**

"Proximate cause" as used in statute, means that cause which in natural and

continuous sequence, unbroken by any new and independent cause produces death, without which it would not have occurred; it does not mean that injury must be sole cause of death but that injury must be substantial contributing cause in sense that death would not have occurred but for injuries. Head injury received in compensable industrial accident occurring more than two years previous to death was not proximate cause of death in view of evidence that deceased drank to excess before and after accident, that immediate cause of death was suffocation from vomit after drinking bout and that even if deceased had taken six nembutal tablets given on prescription of doctor to relieve headaches, it could not have caused or contributed to death. *Breen v. Industrial Accident Board*, 150 M 463, 436 P 2d 701.

**92-614. (2911) Who liable for injuries under the different plans of act and in what amounts, extraterritorial application and reciprocity.** Every employer who shall become bound by and subject to the provisions of compensation plan number one (1), and every employer and insurer who shall become bound by and subject to the provisions of compensation plan number two (2), and the industrial accident fund where the employer of the injured employee has become bound by and subject to the provisions of compensation plan No. 3, shall be liable for the payment of compensation in the manner and to the extent hereinafter provided to an employee who has elected to come under this act, and who shall receive an injury arising out of and in the course of his employment, or, in the case of his death from such injury, to his beneficiaries, if any; or, if none, to his major dependents, if any; or, if none, to his minor dependents, if any.

If a workman employed in this state who is subject to the provisions of this act temporarily leaves the state incidental to that employment and receives an injury arising out of and in the course of such employment, the provisions of this act shall apply to such workman as though he were injured within this state.

If a workman from another state and his employer from another state are temporarily engaged in work within this state, this act shall not apply to them

(a) if the employer and employee are bound by the provisions of the Workmen's Compensation Law or similar law of such other state which applies to them while they are in the state of Montana, and

(b) if the Workmen's Compensation Act of this state is recognized and given effect as the exclusive remedy for workmen employed in this state who are injured while temporarily employed in such other state.

A certificate from an authorized officer of the workmen's compensation department or similar agency of another state certifying that an employer of such other state is bound by the Workmen's Compensation Act of the state and that its act will be applied to employees of the employer while in the state of Montana shall be prima facie evidence of the application of the Workmen's Compensation Law of the certifying state.

The industrial accident board shall have authority, with the approval of the governor, to enter into agreements with workmen's compensation agencies of other states for the purpose of promulgating regulations not inconsistent with the provisions of this act to carry out the extraterritorial application of the workmen's compensation laws of the agreeing states.

History: En. Sec. 16, Ch. 96, L. 1915;  
re-en. Sec. 2911, R. C. M. 1921; amd. Sec.  
1, Ch. 70, L. 1967.

#### Amendments

The 1967 amendment inserted figures after the written numbers in the first paragraph; and added everything after the first paragraph.

### CHAPTER 7—COMPENSATION FOR VARIOUS INJURIES— AMOUNT—PAYMENT

- Section 92-701. Compensation for injury producing temporary total disability.  
92-702. Compensation for injury producing total disability permanent in character.  
92-703. For partial disability.  
92-704. Compensation for injury causing death.  
92-706. Medical and hospital services and such other treatment as approved by the board to be furnished.  
92-707. Compensation from what date paid.  
92-709. Compensation in case of specified injuries.  
92-710. Occupational deafness.

**92-701. (2912) Compensation for injury producing temporary total disability.** Compensation for injury producing temporary total disability shall be as follows: Where the injured employee has no wife, child, father, mother, brother or sister residing within the United States who would be entitled to compensation in case of his death, fifty per centum (50%) of the weekly wages received at the time of the injury, subject to a maximum compensation of sixty dollars (\$60) per week; where the injured employee has a wife, or child, or father or mother, or brother or sister residing within the United States, who would be entitled to compensation in case of his death, fifty-five per centum (55%) of the weekly wages received at the time of the injury, subject to a maximum compensation of sixty-six dollars (\$66) per week; where the injured employee has a wife and one (1) child, or two (2) children, or a father and mother, or two (2) or more brothers and/or sisters residing within the United States who would be entitled to compensation in case of his death, sixty per

centum (60%) of the weekly wages received at the time of the injury, subject to a maximum compensation of seventy-two dollars (\$72) per week; where the injured employee has a wife and two (2) children, or three (3) children residing within the United States who would be entitled to compensation in case of his death, sixty-two and one-half per centum (62½%) of the weekly wages received at the time of the injury, subject to a maximum compensation of seventy-five dollars (\$75) per week; where the injured employee has a wife and three (3) children, or four (4) children residing within the United States who would be entitled to compensation in case of his death, sixty-five per centum (65%) of the weekly wages received at the time of his injury, subject to a maximum compensation of seventy-eight dollars (\$78) per week; where the injured employee has a wife and four (4) or more children, or five (5) or more children residing in the United States who would be entitled to compensation in case of his death, sixty-six and two-thirds per centum (66⅔%) of the weekly wages received at the time of the injury, subject to a maximum compensation of eighty dollars (\$80) per week, and subject in all cases to a minimum compensation of forty-five dollars (\$45) per week, and subject to change when the number of beneficiaries or dependents increases by birth, or decreases.

Compensation for total temporary disability shall be paid for a period not exceeding three hundred (300) weeks from the date of injury.

In cases where it is determined that periodic disability benefits granted by the Federal Old Age, Survivors, and Disability Insurance Act are payable on account of such injury, the weekly benefits payable pursuant to this section shall be reduced, but not below zero, by an amount equal as nearly as practical to one-half such federal periodic benefits for such week.

**History:** En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 4, Ch. 100, L. 1919; re-en. Sec. 2912, R. C. M. 1921; amd. Sec. 10, Ch. 121, L. 1925; amd. Sec. 12, Ch. 177, L. 1929; amd. Sec. 1, Ch. 230, L. 1947; amd. Sec. 1, Ch. 7, L. 1949; amd. Sec. 1, Ch. 48, L. 1951; amd. Sec. 1, Ch. 38, L. 1953; amd. Sec. 1, Ch. 253, L. 1955; amd. Sec. 1, Ch. 234, L. 1957; amd. Sec. 1, Ch. 162, L. 1961; amd. Sec. 1, Ch. 149, L. 1965; amd. Sec. 1, Ch. 207, L. 1967; amd. Sec. 1, Ch. 285, L. 1969; amd. Sec. 1, Ch. 174, L. 1971.

#### Amendments

The 1965 amendment increased the maximum weekly compensation set forth in the various clauses from \$29 to \$35, from \$32 to \$38, from \$36 to \$42, from \$40 to \$46, from \$45 to \$51, and from \$50 to \$56; and increased the minimum weekly compensation from \$25.50 to \$31.50.

The 1967 amendment increased the maximum weekly compensation set forth in the various clauses from \$35 to \$37 per week; from \$38 to \$40 per week; from \$42 to \$45 per week; from \$46 to \$50 per week; from \$51 to \$55 per week; from \$56 to \$60 per week; and increased

the minimum payments in all cases from \$31.50 to \$34.50 per week.

The 1969 amendment increased the maximum weekly compensation set forth in the various clauses from \$37 to \$42 per week; from \$40 to \$45 per week; from \$45 to \$50 per week; from \$50 to \$55 per week; from \$55 to \$60 per week; from \$60 to \$65 per week; increased the minimum weekly compensation from \$34.50 to \$39.50; and added the proviso decreasing benefits in all categories by \$5 after termination of first twenty-six weeks of disability.

The 1971 amendment inserted the preliminary clause at the beginning of the section; increased the maximum weekly compensation set forth in the various clauses from \$42 to \$60, from \$45 to \$66, from \$50 to \$72, from \$55 to \$75, from \$60 to \$78, and from \$65 to \$80; increased the minimum weekly compensation from \$39.50 to \$45; substituted the second paragraph for a sentence reading "Such compensation shall be paid during the period of disability, but for the period not exceeding three hundred (300) weeks from the date of injury provided that after that



twenty-six (26) weeks of disability such compensation shall be decreased by the sum of five dollars (\$5) per week during the remaining period of disability"; added the third paragraph; and made minor changes in punctuation.

#### References

Jones v. Claridge, 145 M 326, 400 P 2d 888; Mahlum v. Broeder, 147 M 386, 412 P 2d 572.

**92-702. (2913) Compensation for injury producing total disability permanent in character.** Where the injured employee has no wife, child, father, mother, brother or sister residing within the United States who would be entitled to compensation in case of his death, fifty per centum (50%) of the weekly wages received at the time of the injury, subject to a maximum compensation of thirty-seven dollars (\$37.00) per week; where the injured employee has a wife, or child, or father, or mother, or brother or sister residing within the United States who would be entitled to compensation in case of his death, fifty-five per centum (55%) of the weekly wages received at the time of the injury, subject to a maximum compensation of forty dollars (\$40.00) per week; where the injured employee has a wife and one (1) child, or two (2) children, or a father and mother, or two (2) or more brothers and/or sisters, residing within the United States who would be entitled to compensation in case of his death, sixty per centum (60%) of the weekly wages received at the time of the injury, subject to a maximum compensation of forty-five dollars (\$45.00) per week; where the injured employee has a wife and two (2) children, or three (3) children residing within the United States who would be entitled to compensation in case of his death, sixty-two and one-half per centum (62½%) of the weekly wages received at the time of the injury, subject to a maximum compensation of fifty dollars (\$50.00) per week; where the injured employee has a wife and three (3) children, or four (4) children residing within the United States who would be entitled to compensation in case of his death, sixty-five per centum (65%) of the weekly wages received at the time of the injury, subject to a maximum compensation of fifty-five dollars (\$55.00) per week; where the injured employee has a wife and four (4) children, or five (5) or more children residing within the United States who would be entitled to compensation in case of his death, sixty-six and two-thirds per centum (66⅔%) of the weekly wages received at the time of the injury, subject to a maximum compensation of sixty dollars (\$60.00) per week; and subject in all cases to a minimum compensation of thirty-four and 50/100 dollars (\$34.50) per week; and subject to change when the number of beneficiaries or dependents increases by birth, or decreases. Such compensation shall be paid during the period of disability, but for the period not exceeding five hundred (500) weeks from the date of injury. Provided, that in cases of hardship and where the board, in its discretion, deems it necessary, the board may order compensation for such further period as it decides proper. Such additional compensation, if ordered, shall be limited to cases of total disability, permanent in character resulting from loss of or the loss of use of both hands, or both arms, or both feet, or both legs, or both eyes. Nothing herein contained shall be construed to affect the maximum of five hundred (500) weeks in computing lump-sum settle-

ments for partial disability or total disability or the maximum of six hundred (600) weeks in cases of compensation for injury causing death.

**History:** En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 5, Ch. 100, L. 1919; re-en. Sec. 2913, R. C. M. 1921; amd. Sec. 11, Ch. 121, L. 1925; amd. Sec. 13, Ch. 177, L. 1929; amd. Sec. 2, Ch. 230, L. 1947; amd. Sec. 2, Ch. 7, L. 1949; amd. Sec. 2, Ch. 48, L. 1951; amd. Sec. 2, Ch. 38, L. 1953; amd. Sec. 2, Ch. 253, L. 1955; amd. Sec. 2, Ch. 234, L. 1957; amd. Sec. 2, Ch. 162, L. 1961; amd. Sec. 2, Ch. 149, L. 1965; amd. Sec. 2, Ch. 207, L. 1967; amd. Sec. 1, Ch. 279, L. 1969.

#### Amendments

The 1965 amendment increased the maximum weekly compensation set forth in the various clauses from \$29 to \$35, from \$32 to \$38, from \$36 to \$42, from \$40 to \$46, from \$45 to \$51, and from \$50 to \$56; and increased the minimum weekly compensation from \$25.50 to \$31.50.

The 1967 amendment increased the maximum weekly compensation set forth in the various clauses from \$35 to \$37

per week; from \$38 to \$40 per week; from \$42 to \$45 per week; from \$46 to \$50 per week; from \$51 to \$55 per week; from \$56 to \$60 per week; and increased the minimum payments in all cases from \$31.50 to \$34.50 per week.

The 1969 amendment added the last three sentences.

#### Effective Date

Section 2 of Ch. 279, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 10, 1969.

#### Repealing Clause

Section 3 of Ch. 279, Laws 1969 repealed all acts and parts of acts in conflict therewith.

#### References

Jones v. Claridge, 145 M 326, 400 P 2d 888; Mahlum v. Broeder, 147 M 386, 412 P 2d 572.

92-703. (2914) **For partial disability.** Where the injured employee has no wife, child, father, mother, brother or sister residing within the United States who would be entitled to compensation in case of his death, fifty per centum (50 %) of the difference between the wages received at the time of the injury and the wages that such injured employee is able to earn thereafter, subject to a maximum compensation of thirty-seven dollars (\$37.00) per week; where the injured employee has a wife, or child, or father, or mother, or brother or sister residing within the United States who would be entitled to compensation in case of his death, fifty-five per centum (55%) of the difference between the wages received at the time of the injury and the wages that such injured employee is able to earn thereafter, subject to a maximum compensation of forty dollars (\$40.00) per week; where the injured employee has a wife and one (1) child, or two (2) children, or a father and mother, or two (2) or more brothers and/or sisters residing within the United States who would be entitled to compensation in case of his death, sixty per centum (60%) of the difference between the wages received at the time of the injury and the wages that such injured employee is able to earn thereafter, subject to a maximum compensation of forty-five dollars (\$45.00) per week; where the injured employee has a wife and two (2) children, or three (3) children residing within the United States who would be entitled to compensation in case of his death, sixty-two and one-half per centum (62½%) of the difference between the wages received at the time of the injury and the wages that such injured employee is able to earn thereafter, subject to a maximum compensation of fifty dollars (\$50.00) per week; where the injured employee has a wife and three (3) children, or four (4) children residing within the United States who would be entitled to compensation in case of his death, sixty-five per centum (65%) of the difference between



the wages received at the time of the injury and the wages that such injured employee is able to earn thereafter, subject to a maximum compensation of fifty-five dollars (\$55.00) per week; where the injured employee has a wife and four (4) or more children, or five (5) or more children residing within the United States who would be entitled to compensation in case of his death, sixty-six and two-thirds per centum ( $66\frac{2}{3}\%$ ) of the difference between the wages received at the time of the injury and the wages that such injured employee is able to earn thereafter, subject to a maximum compensation of sixty dollars (\$60.00) per week; not exceeding however, the maximum compensation allowed in cases of total disability, and not exceeding in amount or duration the total compensation provided in the act for the total loss of the member causing such partial disability. Such compensation shall be paid during the period of disability, not exceeding however, five hundred (500) weeks in cases of permanent partial disability, and fifty (50) weeks in cases of temporary partial disability, subject to change when the number of dependents increases by birth, or decreases, provided, however, that compensation for partial disability resulting from the loss of or injury to any member shall not be payable for a greater number of weeks than is specified in section 92-709 for the loss of such member.

**History:** En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 6, Ch. 100, L. 1919; re-en. Sec. 2914, R. C. M. 1921; amd. Sec. 2, Ch. 177, L. 1929; amd. Sec. 3, Ch. 230, L. 1947; amd. Sec. 3, Ch. 7, L. 1949; amd. Sec. 3, Ch. 48, L. 1951; amd. Sec. 3, Ch. 38, L. 1953; amd. Sec. 3, Ch. 253, L. 1955; amd. Sec. 3, Ch. 234, L. 1957; amd. Sec. 3, Ch. 162, L. 1961; amd. Sec. 3, Ch. 149, L. 1965; amd. Sec. 3, Ch. 207, L. 1967.

#### Amendments

The 1965 amendment increased the maximum weekly compensation set forth in the various clauses from \$29 to \$35, from \$32 to \$38, from \$36 to \$42, from \$40 to \$46, from \$45 to \$51, and from \$50 to \$56.

The 1967 amendment increased the maximum weekly compensation set forth in the various clauses from \$35 to \$37 per week; from \$38 to \$40 per week; from \$42 to \$45 per week; from \$46 to \$50 per week; from \$51 to \$55 per week; and from \$56 to \$60 per week.

#### Computation of Average Weekly Wage

This section does not incorporate the six-day week component under section

92-422 in determining pre- or post-injury earnings for partial disability, and in this manner is different from sections 92-701 and 92-702, which deal with total disability. *Mahlum v. Broeder*, 147 M 386, 412 P 2d 572.

Pre- or post-injury compensation for partial disability under this section is determined by dividing a man's earnings over a reasonable period of time by the total number of days he worked, excluding all overtime and then multiplying the average daily wage by the number of days actually worked each week. *Mahlum v. Broeder*, 147 M 386, 412 P 2d 572.

#### Earning Capacity—Loss of Earnings

Under this section, coupled with section 92-709, a claimant may have an award of temporary total disability payments during period he is entirely disabled, an award of temporary partial disability payments while his injury is still healing and he is partially able to earn wages, and an additional award for loss of prospective future earnings as the result of permanent partial disability. *Jones v. Claridge*, 145 M 326, 400 P 2d 888.

**92-704. (2915) Compensation for injury causing death.** For beneficiaries residing within the United States: Where decedent leaves one (1) beneficiary, fifty per centum (50%) of the wages received at the time of the injury, subject to a maximum compensation of thirty-seven dollars (\$37.00) per week; where decedent leaves two (2) beneficiaries, fifty-five per centum (55%) of the wages received at the time of the injury, subject to a maximum compensation of forty dollars (\$40.00) per week; where



decendent leaves three (3) beneficiaries, sixty per centum (60%) of the wages received at the time of the injury, subject to a maximum compensation of forty-five dollars (\$45.00) per week; where decendent leaves four (4) beneficiaries, sixty-two and one-half per centum ( $62\frac{1}{2}\%$ ) of the wages received at the time of the injury subject to a maximum compensation of fifty dollars (\$50.00) per week; where decendent leaves five (5) beneficiaries, sixty-five per centum (65%) of the wages received at the time of the injury, subject to a maximum compensation of fifty-five dollars (\$55.00) per week; where decendent leaves six (6) or more beneficiaries, sixty-six and two-thirds per centum ( $66\frac{2}{3}\%$ ) of the wages received at the time of the injury, subject to a maximum compensation of sixty dollars (\$60.00) per week; and subject in all such cases to a minimum compensation of thirty-four and 50/100 dollars (\$34.50) per week.

For beneficiaries residing outside of the United States: Where decendent leaves one (1) beneficiary, forty per centum (40 %) of the compensation which would be payable to such beneficiary, if residing within the United States; where decendent leaves two (2) beneficiaries, forty-five per centum (45 %) of the compensation which would be payable to such beneficiaries, if residing within the United States; where decendent leaves three (3) beneficiaries, forty-seven and one-half per centum ( $47\frac{1}{2}\%$ ) of the compensation which would be payable to such beneficiaries, if residing within the United States; where decendent leaves four (4) or more beneficiaries, fifty per centum (50 %) of the compensation which would be payable to such beneficiaries, if residing within the United States.

If decendent leaves no beneficiaries, then compensation shall be payable as follows: To his major dependents, if any, residing in the United States at the date of the happening of the injury; where decendent leaves one (1) major dependent, fifty per centum (50 %) of the wages received at the time of the injury, subject to a maximum compensation of thirty-seven dollars (\$37.00) per week; where decendent leaves two (2) major dependents, fifty-five per centum (55%) of the wages received at the time of the injury, subject to a maximum compensation of forty-one dollars (\$41.00) per week.

If the decendent leaves no major dependents, compensation shall be payable to his minor dependents, if any, if residing within the United States at the time of the happening of the injury, as follows: Where decendent leaves one (1) minor dependent, thirty per centum (30 %) of the wages received at the time of the injury, subject to a maximum compensation of thirty-eight dollars (\$38.00) per week; where decendent leaves two (2) minor dependents, thirty-five per centum (35%) of the wages received at the time of the injury, subject to a maximum compensation of forty dollars (\$40.00) per week; where decendent leaves three (3) or more minor dependents, forty per centum (40%) of the wages received at the time of the injury, subject to a maximum compensation of fifty dollars (\$50.00) per week.

If the decendent leaves no major or minor dependents a lump sum in the amount of three thousand and no/100 dollars (\$3,000.00) shall be payable to his surviving parent or parents.

All such payments of compensation provided for in this section shall be subject to a maximum compensation of sixty dollars (\$60.00) per week for a period not exceeding six hundred (600) weeks and subject to change when the number of beneficiaries or dependents increases by birth, or decreases, and provided, further, that compensation payable to major or minor dependents shall not exceed the amount of the dependency.

**History:** En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 7, Ch. 100, L. 1919; re-en. Sec. 2915, R. C. M. 1921; amd. Sec. 12, Ch. 121, L. 1925; amd. Sec. 14, Ch. 177, L. 1929; amd. Sec. 4, Ch. 230, L. 1947; amd. Sec. 4, Ch. 7, L. 1949; amd. Sec. 4, Ch. 48, L. 1951; amd. Sec. 4, Ch. 38, L. 1953; amd. Sec. 4, Ch. 253, L. 1955; amd. Sec. 4, Ch. 234, L. 1957; amd. Sec. 4, Ch. 162, L. 1961; amd. Sec. 4, Ch. 149, L. 1965; amd. Sec. 1, Ch. 192, L. 1967; amd. Sec. 4, Ch. 207, L. 1967.

#### Compiler's Notes

This section was amended twice in 1967, once by Ch. 192 and once by Ch. 207. Neither amendatory act referred to or incorporated the changes made by the other. Since the two amendments do not appear to conflict, the compiler has made a composite section embodying the amendments made by both 1967 acts.

#### Amendments

The 1965 amendment increased the maximum weekly compensation set forth in the various clauses in the first paragraph from \$29 to \$35, from \$32 to \$38, from \$36 to \$42, from \$40 to \$46, from \$45 to \$51, and from \$50 to \$56; increased the minimum weekly compensation at the end of the first paragraph from \$25.50 to \$31.50; increased the maximum weekly compensation set forth in clauses of the third paragraph from \$29 to \$35 and from \$32 to \$38; increased the maximum weekly compensation set forth in various clauses in the fourth paragraph from \$29 to \$35, from \$32 to \$38, and from \$40 to \$46; and

increased the maximum weekly compensation set forth in the final paragraph from \$50 to \$56.

Chapter 192, Laws of 1967, inserted "per centum" after "sixty-two and one-half" in the first paragraph, and increased the number of weeks of compensation to be paid for injury causing death from 500 to 600 weeks in the sixth paragraph.

Chapter 207, Laws of 1967, increased the maximum weekly compensation set forth in the various clauses in the first paragraph from \$35 to \$37 per week; from \$38 to \$40 per week; from \$40 to \$45 per week; from \$46 to \$50 per week; from \$51 to \$55 per week; from \$56 to \$60 per week; and increased minimum compensation in all cases from \$31.50 to \$34.50 per week; increased the maximum weekly compensation set forth in clauses of the third paragraph from \$35 to \$37 per week and from \$38 to \$41 per week; increased the maximum weekly compensation set forth in the various clauses of the fourth paragraph from \$35 to \$38 and from \$38 to \$40 and from \$46 to \$50; and increased the maximum compensation in the last paragraph from \$56 to \$60.

#### Foreign Beneficiary

Nondependent surviving mother, whose son was killed in mine accident, but who lived in and was a lifelong resident of Ireland, was entitled to award of \$3,000 as against contention that surviving parent is entitled to payment only if residing within United States at time of injury. *Dunphy v. Anaconda Co.*, 151 M 76, 438 P 2d 660.

**92-706. (2917) Medical and hospital services and such other treatment as approved by the board to be furnished.** In addition to the compensation provided by this act and as an additional benefit separate and apart from compensation, the following shall be furnished:

During the first thirty-six (36) months after the happening of the injury, the employer or insurer or the board, as the case may be, shall furnish reasonable services by a physician or surgeon, reasonable hospital services and medicines when needed, and such other treatment approved by the board.

The employer or insurer or the board shall not be required to furnish such services if the employee refuses to allow them to be furnished.

And be it further provided, that where an injury arising out of and received in the course of employment necessarily results in the loss by



amputation of an arm, hand, leg or foot, or the enucleation of an eye, or the loss of any of the natural teeth, the industrial accident board may, in its discretion, order that an artificial member be furnished to supply the loss of any such member or members so lost. The board may also order the replacement or repair of any prosthetic appliance damaged in an industrial accident. Such artificial members shall be furnished at the expense of the employer, the insurer, or the board, as the case may be. The replacement of an artificial member so furnished shall be required every five (5) years, if necessary, unless the board shall determine a replacement is needed within a shorter period.

All hospitals must submit a schedule of fees and charges which shall be limited to such charges as prevail in the same hospital for similar treatment of private patients, for such services and medicines, as requested by the board, to be charged for treatment of injured workman under this section for a one-year period commencing each January 1, and shall submit such schedule no later than thirty (30) days prior to the commencement of such period.

**History:** En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 3, Ch. 196, L. 1921; re-en. Sec. 2917, R. C. M. 1921; amd. Sec. 14, Ch. 121, L. 1925; amd. Sec. 15, Ch. 177, L. 1929; amd. Sec. 2, Ch. 139, L. 1931; amd. Sec. 1, Ch. 229, L. 1943; amd. Sec. 2, Ch. 213, L. 1945; amd. Sec. 1, Ch. 41, L. 1949; amd. Sec. 7, Ch. 38, L. 1953; amd. Sec. 5, Ch. 253, L. 1955; amd. Sec. 6, Ch. 234, L. 1957; amd. Sec. 1, Ch. 81, L. 1965; amd. Sec. 1, Ch. 67, L. 1969; amd. Sec. 1, Ch. 359, L. 1971.

#### Amendments

The 1965 amendment inserted the second sentence in the final paragraph.

The 1969 amendment increased the amount of hospital and medical services to be furnished from \$2,500 to \$5,000 in the first sentence of the second paragraph.

The 1971 amendment, deleted from the end of the second paragraph "not exceeding in amount the sum of five thousand dollars (\$5,000.00)" and the proviso thereto; made the former second sentence of the second paragraph into a third paragraph; deleted from the end of the third paragraph "or if the employee is under hospital contract as provided in section 92-610"; deleted the former fourth paragraph; added the last paragraph; and made minor changes in phraseology.

**92-707. (2918) Compensation from what date paid.** When an injured employee has no wife, child, father, mother, brother or sister residing within the United States who would be entitled to compensation in case of his death, no compensation shall be allowed or paid during the first week of any injury, except as may be required by the provisions of the preceding section, but if disability continues one (1) week, compensation shall be paid from the date of injury. Where the injured employee has a beneficiary or a major or minor dependent residing within the United States who would be entitled to compensation in case of his death, no compensation shall be paid for the first week of any injury, but if disability continues one (1) week, compensation shall be paid from the date of injury; provided, that separate benefits of medical and hospital services shall be furnished from date of injury.

**History:** En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 4, Ch. 196, L. 1921; re-en. Sec. 2918, R. C. M. 1921; amd. Sec. 3, Ch. 177, L. 1929; amd. Sec. 3, Ch. 213, L. 1945; amd. Sec. 5, Ch. 7, L. 1949; amd. Sec. 1, Ch. 144, L. 1969.

#### Amendments

The 1969 amendment substituted "one (1) week" for "six weeks" in the first sentence, and "one (1) week" for "three weeks" in the second sentence.



92-709. (2920) **Compensation in case of specified injuries.** In case of the following specified injuries, compensation for temporary total disability shall be paid at the weekly rate provided in section 92-701, R. C. M., 1947, during the healing period, but in no event shall the healing period exceed twenty-six (26) weeks. In addition thereto but in lieu of any other compensation provided by this act shall be as follows: the compensation shall be paid at the weekly rate provided in section 92-703, R. C. M., 1947, and shall be paid for the following periods:

For loss of:

One arm at or near shoulder .....	280 weeks
One arm at the elbow .....	240 weeks
One arm between wrist and elbow .....	220 weeks
One hand .....	200 weeks
One thumb and the metacarpal bone thereof .....	75 weeks
One thumb at the proximal joint .....	37 weeks
One thumb at the second distal joint .....	25 weeks
One first finger and the metacarpal bone thereof .....	40 weeks
One first finger at the proximal joint .....	30 weeks
One first finger at the second joint .....	22 weeks
One first finger at the distal joint .....	15 weeks
One second finger and the metacarpal bone thereof .....	37 weeks
One second finger at the proximal joint .....	20 weeks
One second finger at the second joint .....	15 weeks
One second finger at the distal joint .....	8 weeks
One third finger and the metacarpal bone thereof .....	25 weeks
One third finger at the proximal joint .....	15 weeks
One third finger at the second joint .....	10 weeks
One third finger at the distal joint .....	5 weeks
One fourth finger and the metacarpal bone thereof .....	15 weeks
One fourth finger at the proximal joint .....	11 weeks
One fourth finger at the second joint .....	8 weeks
One fourth finger at the distal joint .....	6 weeks
One leg at or near the hip joint as to preclude the use of an artificial limb .....	300 weeks
One leg at or above the knee where stump remains sufficient to permit the use of an artificial limb .....	200 weeks
One leg between knee and ankle .....	190 weeks
One foot at the ankle .....	180 weeks
One great toe with the metatarsal bone thereof .....	37 weeks
One great toe at the proximal joint .....	18 weeks
One great toe at the second joint .....	12 weeks
One toe other than the great toe with the metatarsal bone thereof .....	16 weeks
One toe other than the great toe at the proximal joint .....	8 weeks
One toe other than the great toe at second or distal joint .....	5 weeks
One eye by enucleation .....	165 weeks
Total blindness of one eye .....	140 weeks
Total loss of hearing, one ear .....	40 weeks
Total loss of hearing, both ears .....	200 weeks

In all other cases of permanent injury, less than total, not included in the above schedule, the compensation shall bear such relation to the periods stated in the above schedule as the disabilities bear to those produced by the injuries named in the schedule or to total disability (500 weeks).

**Loss of vision:** Where central visual acuity does not exceed 20/200 in the better eye with correcting lenses or the widest diameter of the visual field subtends an angle no greater than 20 degrees, the same as for loss of the eye.

**Total loss of use:** Indemnity benefits for permanent total loss of use of a member shall be the same as for loss of the member.

**Partial loss or partial loss of use:** Indemnity benefits for permanent partial loss or loss of use of a member may be proportionate loss or loss of use of the member.

In any case in which there shall be a loss, or loss of use, of more than one member as set forth in this section, not amounting to permanent total disability, the award of indemnity benefits shall be for the loss, or loss of use thereof, which awards shall run consecutively, provided, however, that the total award or compensation in no case shall exceed five hundred (500) weeks.

**Disfigurement:** The board may award proper and equitable indemnity benefits for serious face, head, or neck disfigurement, not to exceed twenty-five hundred dollars (\$2,500.00) in addition to any other indemnity benefits payable under this section.

The loss of both hands, or both arms, or both feet, or both legs, or both eyes, or any two (2) thereof, in one (1) accident, in the absence of conclusive proof to the contrary shall constitute total disability, permanent in character. Provided, however, that the percentage of permanent disability caused by any single accident or injury shall be so computed as to cover the permanent disability caused by that particular injury without reference to any previous physical ailment or defect or to any injury previously suffered or any permanent disability caused thereby; provided, that no payment under this section shall be in lieu of the separate benefit of medical and hospital services.

**History:** En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 8, Ch. 100, L. 1919; amd. Sec. 5, Ch. 196, L. 1921; re-en. Sec. 2920, R. C. M. 1921; amd. Sec. 16, Ch. 121, L. 1925; amd. Sec. 16, Ch. 177, L. 1929; amd. Sec. 5, Ch. 213, L. 1945; amd. Sec. 5, Ch. 230, L. 1947; amd. Sec. 6, Ch. 7, L. 1949; amd. Sec. 5, Ch. 48, L. 1951; amd. Sec. 5, Ch. 38, L. 1953; amd. Sec. 6, Ch. 253, L. 1955; amd. Sec. 7, Ch. 234, L. 1957; amd. Sec. 5, Ch. 162, L. 1961; amd. Sec. 5, Ch. 149, L. 1965; amd. Sec. 5, Ch. 207, L. 1967; amd. Sec. 1, Ch. 140, L. 1971.

#### Amendments

The 1965 amendment increased the maximum weekly compensation set forth in the various clauses in the preliminary

paragraph from \$29 to \$35, from \$32 to \$38, from \$36 to \$42, from \$40 to \$46, from \$45 to \$51, and from \$50 to \$56; and increased the minimum weekly compensation set forth at the end of the preliminary paragraph from \$25.50 to \$31.50.

The 1967 amendment increased the maximum weekly compensation set forth in the various clauses in the preliminary paragraph from \$35 to \$37 per week; from \$38 to \$40 per week; from \$42 to \$45 per week; from \$46 to \$50 per week; from \$51 to \$55 per week; from \$56 to \$60 per week; and increased the minimum weekly compensation set forth at the end of the preliminary paragraph from \$31.50 to \$34.50.

The 1971 amendment completely rewrote the preliminary paragraph; for previous text, see parent volume and above notes relating to 1965 and 1967 amendments. The 1971 amendment also inserted "In all other cases of permanent injury, less than total, not included in the above schedule, the compensation shall bear such relation to the periods stated in the above schedule as the disabilities bear to those produced by the injuries named in the schedule or to total disability (500 weeks)" following the schedule of injuries; and made minor changes in phraseology.

#### **Additional Compensation**

Under this section, coupled with section 92-703, a claimant may have an award of temporary total disability payments during period he is entirely disabled, an award of temporary partial disability payments while his injury is

still healing and he is partially able to earn wages, and an additional award for loss of prospective future earnings as the result of permanent partial disability. *Jones v. Claridge*, 145 M 326, 400 P 2d 888.

#### **Construction**

The words "indemnity benefits" coupled with a "proportionate loss" anticipate estimated loss of future earning capacity irrespective of loss of wages and economic deprivation suffered by claimant and his dependents during the healing period. *Jones v. Claridge*, 145 M 326, 400 P 2d 888.

#### **Date of Accrual**

Indemnity benefits accrue from the date the permanent nature of the disability becomes established. *Jones v. Claridge*, 145 M 326, 400 P 2d 888.

**92-710. Occupational deafness.** Regardless of other definitions of injury and time limitations imposed by this act, there shall be compensation awarded for occupational deafness as follows:

(1) "Occupational deafness" means permanent partial or permanent total loss of hearing of one or both ears due to prolonged exposure to noise in employment. "Noise" means sound capable of producing occupational deafness. "Noisy employment" means employment in the performance of which an employee is subjected to noise.

(A) Losses of hearing due to industrial noise for compensation purposes shall be confined to the frequencies of 500, 1000, and 2000 cycles per second. Loss of hearing ability for frequency tones above 2000 cycles per second is not to be considered as constituting disability for hearing.

(B) The per cent of hearing loss, for purposes of the determination of compensation claims for occupational deafness, shall be calculated as the average, in decibels, of the thresholds of hearing for the frequencies of 500, 1000 and 2000 cycles per second. Pure tone air conduction audiometric instruments, approved by nationally recognized authorities in this field, shall be used for measuring hearing loss. If the losses of hearing average 26 decibels or less in the three frequencies, as measured under ISO Standard 1964, such losses of hearing shall not then constitute any compensable hearing disability. If the losses of hearing average 94 decibels or more in the three frequencies, as measured under ISO Standard 1964, then the same shall constitute and be total or 100 per cent compensable hearing loss.

(C) In measuring hearing impairment the lowest measured losses in each of the three frequencies shall be added together and divided by three to determine the average decibel loss. For every decibel of loss exceeding 24 decibels an allowance of one and one-half per cent (1½%) shall be made up to the maximum of one hundred per cent (100%), which is reached at 94 decibels.

(D) In determining the binaural percentage of loss, the percentage of impairment in the better ear shall be multiplied by five (5). The result-



ing figure shall be added to the percentage of impairment in the poorer ear and the sum of the two divided by six (6). The final percentage shall be representative of the binaural hearing impairment.

(E) Before determining the percentage of hearing impairment, in order to allow for the average amount of hearing loss from nonoccupational causes found in the population at any given age, there shall be deducted from the total average decibel loss, one-half decibel for each year of the employee's age over forty at the time of last exposure to industrial noise.

(F) No consideration shall be given to the question of whether or not the ability of an employee to understand speech is improved by the use of a hearing aid.

(2) No benefits shall be payable for temporary total or temporary partial disability under this act for loss of hearing due to prolonged exposure to noise.

(3) An employee who because of occupational deafness is transferred by his employer to other employment and thereby sustains actual wage loss, shall be compensated at the rate provided in section 92-703, Revised Codes of Montana, 1947, as amended, not exceeding three thousand five hundred dollars (\$3,500) in the aggregate from all employers. "Time of injury," "incurred such injury," "date of injury" in such case shall be the date of wage loss.

(4) Subject to the limitations herein contained, there shall be payable for total occupational deafness of one ear, forty (40) weeks of compensation; for total occupational deafness of both ears, two hundred (200) weeks of compensation; and for partial occupational deafness, compensation shall bear such relation to that named herein as disabilities bear to the maximum disabilities herein provided.

In cases covered by this subsection, "time of injury," "incurred such injury" or "date of injury" shall be exclusively the date of occurrence of any of the following events to an employee:

(a) Transfer because of occupational deafness to nonnoisy employment by an employer whose employment has caused occupational deafness;

(b) Retirement;

(c) Termination of the employer-employee relationship;

(d) Layoff, provided the layoff is complete and continuous for one year;

(e) No claim under this subsection shall be filed, however, until six (6) consecutive months of removal from noisy employment after the time of injury except that under subparagraph (d), such six (6) consecutive months period may commence within the last six (6) months of layoff.

(5) The limitation provisions in this act shall control claims arising under this subsection. Such provisions shall run from the first date upon which claim may be filed, or from the date of subsequent death, provided that no claim shall accrue to any dependent unless an award has been issued or liability admitted.

(6) No payment shall be made to an employee under this section unless he shall have worked in noisy employment for a total period of at least ninety (90) days for the employer from whom he claims compensation.

(7) Any amount paid to an employee under this section by an employer shall be credited against compensation payable by any employer to such employee for occupational deafness under subsections (3) and (4). No employee shall in the aggregate receive greater compensation from any or all employers for occupational deafness than that provided in this section for total occupational deafness.

(8) Occupational deafness as herein provided is distinguished from traumatic loss of hearing which is governed by the specific loss schedule hereinabove.

(9) An employer shall become liable for the entire occupational deafness to which his employment has contributed; but if previous deafness is established by hearing test or other competent evidence, whether or not the employee was exposed to noise within the six (6) months preceding such test, he shall not be liable for previous loss so established nor shall he be liable for any loss for which compensation has previously been paid or awarded.

(10) No claim shall be filed, however, unless the employee is exposed eight (8) hours daily and for a period of at least ninety (90) days as above required to noise intensity levels above 100 decibels.

(11) This act shall become effective January 1, 1972.

**History:** En. 92-710 by Sec. 1, Ch. 366, L. 1971. number in lieu of former section 92-710 R. C. M. 1947.

#### Compiler's Notes

Section 1 of Ch. 366, Laws of 1971, enacted the section and assigned the section

#### Title of Act

An act to provide compensation for loss of hearing resulting from exposure to industrial noise.

## CHAPTER 8—MISCELLANEOUS REGULATIONS—POWERS OF BOARD—REHEARINGS AND APPEALS

Section 92-827. Record of proceedings to be kept and testimony to be taken down—attorney's fees—transcripts on appeal—indigent claimants.

92-834. How appeal taken—notice—record—trial.

92-807. (2933) Notice of claims for injuries other than death.

#### References

La Forest v. Safeway Stores, Inc., 147 M 431, 414 P 2d 200.

92-808. (2934) Employers and insurers required to file reports, etc.

#### Failure to File

Where employee was injured while performing work assigned to him under contract between his employer and second company, failure of second company to file timely injury report with industrial

accident board prevented it from invoking exclusive jurisdiction in board as "exclusive remedy" after employee filed civil suit in district court. State ex rel. Broesder v. Industrial Accident Board, 154 M 178, 461 P 2d 456.

92-821. (2947) Jurisdiction of board to hear disputes and controversies.

#### References

State ex rel. Glacier General Assurance

Co. v. District Court, 143 M 569, 393 P 2d 54.

**92-825. (2951) When a nominal disability indemnity may be awarded.**

**Degree of Permanent Physical Impairment Unknown**

Where the board found that a compensable impairment existed, but the degree of permanent physical impairment was un-

known, it was proper to award nominal disability indemnity under this section. *Benoit v. Murphy Corp.*, 143 M 463, 391 P 2d 350.

**92-827. (2953) Record of proceedings to be kept and testimony to be taken down—attorney's fees—transcripts on appeal—indigent claimants.** A full and complete record shall be kept of all proceedings and hearings had before the board, or any member thereof, of any formal hearing had, and all testimony produced before the board or any member thereof shall be taken down by a stenographic reporter appointed by the board, and the parties shall be entitled to be heard in person or by attorney.

Whenever the claimant or plaintiff is represented by an attorney either before the board or the courts, the industrial accident board may, in its discretion or upon the application of the claimant or plaintiff, fix the amount of the attorney fee of the attorney representing the claimant or plaintiff, and the fee fixed by the board shall be paid by claimant or plaintiff.

In cases of an action to review any order or decision of the board, a transcript of such testimony, together with all exhibits, and of the pleadings, records, and proceedings in the cause shall constitute the record of the board. Provided further, that the board must furnish a copy of such testimony, written exhibits, pleadings, records and proceedings to the claimant without cost.

After judgment on appeal to the district court, an indigent claimant, deeming himself aggrieved, may file in said court an affidavit that he does not have money, property or credit sufficient to pay for the cost of a transcript on appeal to the supreme court, and the clerk of court serve a copy by registered mail, return receipt requested, on the industrial accident board; the affidavit shall be prima facie evidence of the truth of the facts stated therein; in the event the board contest the allegations, the court shall fix a date for the hearing thereof, not less than five nor more than ten days from date of filing, and shall make its determination of the controversy, and if it be found and adjudged that the claimant does not have sufficient money, property or credit to pay for such transcript, the order shall direct the industrial accident board to furnish the same at its expense to be paid from the industrial accident administrative earmarked revenue account.

All proceedings on such appeal, including preparation, presentation and settlement of the bill of exceptions, shall be continued pending determination of the controversy.

If the board does not contest the allegations of the claimant's affidavit within ten days from receipt, it shall be deemed in default and the court shall make its order in favor of claimant on expiration of such period.

**History:** En. Sec. 20, Ch. 96, L. 1915; L. 1937; amd. Sec. 1, Ch. 170, L. 1959; re-en. Sec. 2953, R. C. M. 1921; amd. Sec. amd. Sec. 1, Ch. 111, L. 1965.  
4, Ch. 139, L. 1931; amd. Sec. 3, Ch. 162,



**Amendment**

The 1965 amendment added the fourth, fifth and sixth paragraphs.

**Repealing Clause**

Section 2 of Ch. 111, Laws 1965 repealed all acts and parts of acts in conflict therewith.

**Attorney's Fees**

Attorney who charged fees in excess of amount ordered by industrial accident board pursuant to this section was properly subject to discipline by public censure. In re Porter, — M —, 478 P 2d 866.

**92-829. (2955) Application for rehearing.****Court Required to Make Findings of Fact and Conclusions of Law**

While there is no rule of law requiring the district court to adopt the proposed findings and conclusions of either litigant on appeal in a workmen's compensation case, and the court may request that the litigants submit such findings, or litigants may submit them without a request by the

court, it is clear that the legislature intended that the court make findings of fact and conclusions of law in all cases on appeal. Stokes v. Delaney & Sons, Inc., 143 M 516, 391 P 2d 698.

**References**

Simons v. C. G. Bennett Lumber Co., 146 M 129, 404 P 2d 505.

**92-830. (2956) Board may at any time diminish or increase an award.****References**

State ex rel. Glacier General Assurance

Co. v. District Court, 143 M 569, 393 P 2d 54.

**92-833. (2959) Appeal to district court.****Jurisdiction of District Court**

District court had no jurisdiction to hear claimant's appeal from the decision of the industrial accident board when the court's seat was in neither the county of the em-

ployer's residence nor the county of the place of the accident. State ex rel. Glacier General Assurance Co. v. District Court, 143 M 569, 393 P 2d 54.

**92-834. (2960) How appeal taken—notice—record—trial.** Said appeal shall be taken by serving a written notice of said appeal upon the chairman of such industrial accident commission, or upon any other member thereof, which said service shall be made by the delivery of a copy of such notice to such chairman or member, and filing the original with the clerk of the court to which said appeal is taken. A copy of such notice must also be served upon the adversary party, if there be any, by mailing the same to said adversary party to such address of such party as said party shall have left with the board. If such party shall have left no address with the board, then no service upon such party shall be required. The order of filing and service of said notice is immaterial. Immediately upon service upon said board of said notice, the said board shall certify to said district court the entire record and proceedings, including all testimony and evidence taken by said board, with the clerk of said district court. Immediately upon the return of such certified record, the district court shall fix a day for the hearing of said cause, and shall cause notice to be served upon the board and upon the appellant, and also upon the adversary party, if there be any. The court may, upon the hearing, for good cause shown, permit additional evidence to be introduced, but, in the absence of such permission from the court, the cause shall be heard on the record of the board, as certified to the court by it. The trial of the matter shall be de novo, and upon such trial the court shall determine whether or not the board regularly pursued its authority, and whether or not the findings of the board ought to be sustained, and whether or not such findings are reasonable under all the circumstances of the case.

**History:** En. Sec. 22, Ch. 96, L. 1915; re-en. Sec. 2960, R. C. M. 1921; amd. Sec. 7, Ch. 149, L. 1965.

#### **Amendment**

The 1965 amendment made no apparent change.

#### **Repealing Clause**

Section 8 of Ch. 149, Laws 1965 repealed all acts and parts of acts in conflict therewith.

#### **Effective Date**

Section 9 of Ch. 149, Laws 1965 read "This act shall be in full force and effect from and after the 1st day of July, 1965."

#### **Court Required to Make Findings of Fact and Conclusions of Law**

While there is no rule of law requiring the district court to adopt the proposed findings and conclusions of either litigant on appeal in a workmen's compensation case, and the court may request that the litigants submit such findings, or litigants may submit them without a request by the court, it is clear that the legislature intended that the court make findings of fact and conclusions of law in all cases on appeal. *Stokes v. Delaney & Sons, Inc.*, 143 M 516, 391 P 2d 698.

#### **References**

*Simons v. C. G. Bennett Lumber Co.*, 146 M 129, 404 P 2d 505.

### **92-835. (2961) Appearances—setting aside conclusions, orders, etc.**

#### **References**

*Stokes v. Delaney & Sons, Inc.*, 143 M 516, 391 P 2d 698.

### **92-838. (2964) Court to give liberal construction to act.**

#### **Failure to List Children in Claim**

Where claimant failed to list all of his children in his claim for compensation it did not constitute a waiver of the claim. *Stokes v. Delaney & Sons, Inc.*, 143 M 516, 391 P 2d 698.

#### **References**

*State ex rel. Glacier General Assurance Co. v. District Court*, 143 M 569, 393 P 2d 54.

## **CHAPTER 9—COMPENSATION PLAN NO. 1**

Section 92-902. Proof of solvency of employer electing plan No. 1 to be filed.

**92-902. (2971) Proof of solvency of employer electing plan No. 1 to be filed.** Every such employer now or hereafter engaged in the state of Montana, in the industries, trades, works, occupations, or employments herein mentioned, and who shall have elected to be bound by such compensation plan No. 1, shall file such proof of his solvency within the time and in such form as may be prescribed by the rules or orders of the board.

The board may levy an assessment in an amount not to exceed three-hundredths of one per cent of the annual payroll of such employer in Montana, for the preceding fiscal year, which assessment shall be paid to the board by said employer at the time of filing of proof of solvency.

No assessment shall be in an amount less than two hundred dollars (\$200).

If such employer had no payroll in Montana for the entire preceding fiscal year, the assessment shall be based on the estimated payroll for the year in which election is made.

The treasurer of the board shall pay the amounts so collected into the state treasury.

**History:** En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2971, R. C. M. 1921; amd. Sec. 5, Ch. 139, L. 1931; amd. Sec. 3, Ch. 176, L. 1957; amd. Sec. 169, Ch. 147, L. 1963;

amd. Sec. 1, Ch. 183, L. 1965; amd. Sec. 1, Ch. 170, L. 1969; amd. Sec. 1, Ch. 143, L. 1971.

**Amendments**

The 1965 amendment increased the minimum assessment specified in the third paragraph from \$10 to \$75.

The 1969 amendment increased the minimum assessment specified in the third paragraph from \$75 to \$200.

The 1971 amendment substituted "may" for "shall" before "levy an assessment" in

the second paragraph; increased the maximum assessment rates specified in the second paragraph from two hundredths to three hundredths of one per cent; and made minor changes in phraseology.

**Repealing Clause**

Section 2 of Ch. 183, Laws 1965 repealed all acts and parts of acts in conflict therewith.

**CHAPTER 10—COMPENSATION PLAN NO. 2**

Section 92-1004. Agreement to be contained in policies of insurance—deposit of bonds.  
92-1005. Policies made subject to this act—assessment of insurers.

**92-1002. (2979) Duty of employer electing plan No. 2, etc.****References**

Meyer v. Noble Drilling, Inc., 259 F Supp 110, 115.

**92-1004. (2981) Agreement to be contained in policies of insurance—deposit of bonds.** No such policy shall be issued unless it contains the agreement of the insurer that it will promptly pay to the person entitled to compensation all the installments of compensation or other payments in this act provided for, and that the obligation shall not be affected by any default of the insured after the injury, or by any default in the giving of any notice required by such policy or by this act or otherwise. Such agreement shall be construed to be a direct promise by the insured to the person entitled to compensation. Before issuance of any policy by an insurer as herein authorized, such insurer must deposit with the treasurer of the industrial accident board, bonds of the United States or the state of Montana, or of any school district, county, city or town in the state of Montana, or a corporate surety bond made out to and approved by the board, in an amount not less than five thousand dollars (\$5,000.00) or more than one hundred thousand dollars (\$100,000), as the industrial accident board may determine. If any insurer shall fail to discharge any liability after the amount thereof shall be determined by the board, and within the time limited by the board, it shall be the duty of the board to convert said bonds, or such part thereof as is necessary, into cash, and from the proceeds liquidate such liability; and thereafter said insurer must make an additional deposit to meet any deficiency caused thereby. It is intended hereby to give the industrial accident board the discretion in the matter of whether an insurer has failed to discharge any liability.

**History:** En. Sec. 35, Ch. 96, L. 1915; amd. Sec. 10, Ch. 100, L. 1919; re-en. Sec. 2981, R. C. M. 1921; amd. Sec. 11, Ch. 177, L. 1929; amd. Sec. 1, Ch. 141, L. 1971.

third sentence; and increased the maximum deposit under the third sentence from \$20,000 to \$100,000.

**Amendments**

The 1971 amendment inserted the clause relating to corporate surety bonds in the

**Cross-References**

Policy to provide for freedom of choice of professional practitioner, sec. 40-4108.

**92-1005. (2982) Policies made subject to this act—assessment of insurers.** Every policy for the insurance of the compensation herein provided for, or against liability therefor, shall be deemed to be made subject



to the provisions of this act. No insurer shall enter into any such policy of insurance unless its forms shall have been approved by the board, and as otherwise provided by law.

On or before the first day of July of each year, the board shall assess and each insurer shall pay to the board not to exceed three and one-fourths per cent (3¼%) of its gross annual direct premiums collected in Montana on policies of insurance insuring employers who elected to become bound by the compensation plan No. 2 during the previous calendar year, less return premiums. No such assessment shall be less than two hundred dollars (\$200). The treasurer of the board shall pay the amounts so collected into the state treasury. Payments by such insurers under this section shall be considered as items of loss for rate-making purposes.

History: En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2982, R. C. M. 1921; amd. Sec. 1, Ch. 217, L. 1951; amd. Sec. 5, Ch. 176, L. 1957; amd. Sec. 1, Ch. 203, L. 1959; amd. Sec. 170, Ch. 147, L. 1963; amd. Sec. 1, Ch. 142, L. 1971.

#### Amendments

The 1971 amendment increased the minimum assessment specified in the second sentence of the second paragraph from \$10 to \$200.

### CHAPTER 11—COMPENSATION PLAN NO. 3

- Section 92-1101. What necessary in electing plan No. 3—percentage of payroll to be paid under plan.  
 92-1103. Manner of electing—contract or policy of insurance—payment of premium.  
 92-1104. Classifications by board.  
 92-1105. Intent and purpose of plan No. 3.  
 92-1105.1. Advanced rate for dangerous places of employment.  
 92-1108. In case of default, rates to be advanced twenty-five per cent (25%).  
 92-1121. What included in computing compensation in hazardous employment.

92-1101. (2990) What necessary in electing plan No. 3—percentage of payroll to be paid under plan.

### COMPENSATION PLAN NUMBER THREE

Every employer subject to the provisions of compensation plan No. 3 shall at the times and in the manner prescribed by the industrial accident board, pay to the industrial accident board a premium based on a percentage of his payroll as determined by the industrial accident board which shall be a member of a rating organization in accordance with the provisions of this act.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2990, R. C. M. 1921; amd. Sec. 1, Ch. 123, L. 1957; amd. Sec. 175, Ch. 147, L. 1963; amd. Sec. 1, Ch. 233, L. 1969; amd. Sec. 20, Ch. 329, L. 1969.

#### Compiler's Notes

This section was amended twice in 1969, once by Ch. 233 and once by Ch. 329. Neither amendatory act mentioned nor included the changes made by the other. Since the two amendments do not

appear to conflict, the compiler has made a composite section incorporating both amendments.

#### Amendments

Chapter 233, Laws of 1969, substituted "at the times and in the manner prescribed by the industrial accident board" for "in the manner herein specified."

Chapter 329, Laws of 1969, inserted "which shall be a member of a rating organization."

**92-1103. (2991) Manner of electing—contract or policy of insurance—payment of premium.** The industrial accident board shall prescribe the procedure by which employers may elect to be bound by compensation plan No. 3, the effective time of such election and the manner in which such election is terminated for reasons other than default in payment of premiums. Every employer electing to be bound by compensation plan No. 3 shall receive from the industrial accident board a contract or policy of insurance in a form approved by the board. The premium thereon shall be paid by the employer, to the industrial accident board at such times as the board shall prescribe and shall be paid over by the board to the state treasurer to the credit of the industrial insurance account in the agency fund.

**History:** En. Sec. 40, Ch. 96, L. 1915; amd. Sec. 6, Ch. 196, L. 1921; re-en. Sec. 2991, R. C. M. 1921; amd. Sec. 2, Ch. 123, L. 1957; amd. Sec. 178, Ch. 147, L. 1963; amd. Sec. 2, Ch. 233, L. 1969.

#### **Amendments**

The 1969 amendment inserted the present first sentence.

#### **Repealing Clause**

Section 3 of Ch. 233, Laws 1969 read "Sections 92-1106 and 92-1107, R. C. M. 1947, are repealed."

#### **Cross-References**

Policy to provide for freedom of choice of professional practitioner, sec. 40-4108.

**92-1104. (2992) Classifications by board.** The industrial accident board is hereby given full power and authority to determine premium rates and classifications as in its judgment and experience, and as a member of a rating organization as is otherwise provided for in this code, may be necessary or expedient, provided that no change in the classification or rates prescribed shall be effective until thirty (30) days after the date of the order making such change.

**History:** En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2992, R. C. M. 1921; amd. Sec. 3, Ch. 123, L. 1957; amd. Sec. 21, Ch. 329, L. 1969.

#### **Amendments**

The 1969 amendment inserted "and as

a member of a rating organization as is otherwise provided for in this code."

#### **Cross-References**

Industrial accident board to be member of rating organization, sec. 40-5616.

**92-1105. (2993) Intent and purpose of plan No. 3.** It is the intent and purpose of compensation plan No. 3 that each industry, trade, occupation or employment coming under the provisions of said plan shall be liable to pay for injuries happening to employees coming under the provisions of the Workmen's Compensation Act.

All premiums, penalties, recoveries by subrogation, interest earned upon money belonging to the fund, and securities acquired by or through use of money shall be deposited in the industrial insurance account in the agency fund.

The industrial insurance program shall be neither more nor less than self-supporting. Employments affected by the provisions hereof shall be divided by the board as a member of a rating organization into classes, whose rates may be readjusted at such times as the board as a member of such rating organization may determine. Separate accounts shall be kept of the amounts collected and expended in each class for determining

rates but for payment of compensation and dividends the industrial insurance account shall be one and indivisible. The board as a member of such rating organization shall determine the hazards of the different classes of occupations or industries and fix the premiums therefor at the lowest rate consistent with maintenance of a solvent industrial insurance fund, and the creation of surplus and reserves and for such purpose may adopt a system of schedule rating in such a manner as to take account of the peculiar hazard of each risk, and shall take advantage of the experience and information afforded to it as a member of such rating organization.

The board in fixing rates shall provide for the expenses of administering the industrial insurance account allowed by law, the disbursements on account of injuries and deaths of employees in each class, an adequate catastrophe reserve, reserves adequate to meet anticipated and unexpected losses, and such other reserves and surplus as may be determined by the board as a member of such rating organization.

**History:** En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2993, R. C. M. 1921; amd. Sec. 4, Ch. 123, L. 1957; amd. Sec. 176, Ch. 147, L. 1963; amd. Sec. 22, Ch. 329, L. 1969.

#### Amendments

The 1969 amendment, in the second sentence of the third paragraph, inserted "as a member of a rating organization" after "board"; inserted "as a member of such rating organization" after "board" in the second and fourth sentences, and add-

ed "and shall take advantage \* \* \* rating organization" to the fourth sentence; and, in the fourth paragraph, added "as a member of such rating organization."

#### Separability Clause

Section 23 of Ch. 329, Laws 1969 read "The provisions of this act shall be severable; and if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitutional or void, the remainder of this act shall continue in full force and effect."

**92-1105.1. Advanced rate for dangerous places of employment.** If by reason of poor or careless management, or otherwise, any place of employment be unduly dangerous in comparison with other like places of employment, and the employer operating the same shall not have complied with the safety provisions of the Montana Safety Act, and such employer shall be under compensation plan number 3, the board, in addition to any other penalty provided, shall advance the rate upon such place of employment fifty (50) per cent, and such advanced rate shall continue and be in force until such place of employment shall have ceased to be unduly dangerous in comparison with other like places of employment and such employer shall have obtained a certificate of the board.

**History:** En. 92.1105.1 by Sec. 28, Ch. 341, L. 1969.

**92-1106, 92-1107. (2994, 2995) Repealed.**

#### Repeal

Sections 92-1106 and 92-1107 (Sec. 40, Ch. 96, L. 1915; Sec. 179, Ch. 147, L.

1963), relating to payments under compensation plan No. 3, were repealed by Sec. 3, Ch. 233, Laws 1969.

**92-1108. (2996) In case of default, rates to be advanced twenty-five per cent (25%).** Any employer who is in default in the observance of



any order of the board, issued pursuant to the provisions of sections 92-1101 to 92-1105, inclusive, shall, in addition to any other penalty provided by this act, be charged an advance of twenty-five per centum (25%) over the established rate, and such advanced rate shall continue and be in force until such employer shall have ceased to be in such default.

**History:** En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2996, R. C. M. 1921; amd. Sec. 4, Ch. 233, L. 1969.

#### Amendments

The 1969 amendment substituted section "92-1105" for "92-1107."

### 92-1112. (3000) Investment of reserve—payment of installments.

#### Cross-References

Board of land commissioners functions transferred, sec. 82A-205(1)(i).

**92-1121. (3009) What included in computing compensation in hazardous employment.** In computing the payroll, the entire compensation received by every workman employed in the hazardous occupations enumerated in this act, shall be included, whether it be in the form of salary, wage, piecework, or otherwise, and whether payable in money, board or otherwise.

**History:** En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3009, R. C. M. 1921; amd. Sec. 11, Ch. 235, L. 1947; amd. Sec. 1, Ch. 146, L. 1971.

#### Amendments

The 1971 amendment deleted a second sentence reading "Salary and wages paid during actual vacation period shall not be computed or assessed."

## CHAPTER 12—SAFETY PROVISIONS

(Repealed—Sections 6 to 8, Chapter 176, Laws of 1957; Section 30, Chapter 341, Laws of 1969)

### 92-1201 to 92-1210. (3012 to 3021) Repealed.

#### Repeal

Sections 92-1201 to 92-1210 (Secs. 50, 51, Ch. 96, L. 1915), relating to safety

provisions, were repealed by Sec. 30, Ch. 341, Laws 1969.

### 92-1214 to 92-1222. (3025 to 3033) Repealed.

#### Repeal

Sections 92-1214 to 92-1222 (Secs. 53, 54, Ch. 96, L. 1915), relating to safety

provisions, were repealed by Sec. 30, Ch. 341, Laws 1969.

## CHAPTER 13—OCCUPATIONAL DISEASE ACT

- Section 92-1303. Definitions.  
 92-1304. Occupational disease.  
 92-1305. Proximate causation.  
 92-1310. Liability of last employer, exception.  
 92-1311. Payment of compensation—exceptions and limitations.  
 92-1312. Claims must be presented within what time.  
 92-1313. Notice of disability or death.  
 92-1315. Procedure for medical examination.  
 92-1315.1. Medical definition of totally disabling pneumoconiosis.  
 92-1321. Compensation benefits payable under this act.

92-1303. **Definitions.** Except as in this section and elsewhere in this act expressly set forth, the definitions contained in the Workmen's Compensation Act shall apply to terms and words herein contained.

1. to 4. \* \* \* [Same as parent volume.]

5. "Disablement" means the event of becoming physically incapacitated by reason of an occupational disease as defined in this act from performing any work for remuneration or profit. "Silicosis," as defined in this act, when complicated by active pulmonary tuberculosis, shall be presumed to be total disablement. "Disability," "disabled," "total disability," or "totally disabled" shall be synonymous with "disablement," but they shall have no reference to "partial permanent disability." Provided that in the event of death or disability due to pneumoconiosis the following shall apply:

a. If a miner who is suffering or has suffered from pneumoconiosis was employed for ten (10) years or more in one (1) or more coal mines there shall be a rebuttable presumption that his pneumoconiosis arose out of such employment.

b. If a deceased miner was employed for ten (10) years or more in one (1) or more coal mines and died from a respirable disease there shall be a rebuttable presumption that his death was due to pneumoconiosis.

c. If a miner is suffering or suffered from a chronic dust disease of the lung which (1) when diagnosed by chest roentgenogram yields one (1) or more large opacities (greater than one centimeter in diameter) and would be classified in category A, B, or C in the international classification of radiographs of the pneumoconioses by the international labor organization, (2) when diagnosed by biopsy or autopsy, yields massive lesions in the lung, or (3) when diagnosis is made by other means, would be a condition which would reasonably be expected to yield results described in clause (1) or (2) if diagnosis had been made in the manner prescribed in clause (1) or (2) then there shall be an irrebuttable presumption that he is totally disabled due to pneumoconiosis or that his death was due to pneumoconiosis, as the case may be.

6. to 25. \* \* \* [Same as parent volume.]

26. For the purpose of this act "silicosis" is defined as a chronic disease of the lungs caused by the prolonged inhalation of silicon dioxide ( $\text{SiO}_2$ ) characterized by small discrete nodules of fibrous tissue similarly disseminated throughout both lungs, causing characteristic X-ray pattern, and by variable clinical manifestations.

a. For the purpose of this act "pneumoconiosis" is defined as a chronic dust disease of the lung arising out of employment in coal mines, and includes anthracosis, coal workers' pneumoconiosis, silicosis, or anthracosilicosis arising out of such employment.

27. and 28. \* \* \* [Same as parent volume.]

**History:** En. Sec. 3, Ch. 155, L. 1959; visio relating to pneumoconiosis, including paragraphs a through c, in subdivision 5; amd. Sec. 1, Ch. 190, L. 1971. and inserted paragraph a defining pneumoconiosis in subdivision 26.

**Amendments.** The 1971 amendment inserted the pro-

**92-1304. Occupational disease.** The term "occupational disease" shall mean all diseases arising out of or contracted from and in the course of employment.

**History:** En. Sec. 4, Ch. 155, L. 1959; amd. Sec. 1, Ch. 95, L. 1965; amd. Sec. 1, Ch. 41, L. 1971.

all acts and parts of acts in conflict therewith.

#### **Amendments**

The 1965 amendment added "asbestosis" to item 1.

The 1971 amendment completely re-wrote this section. For prior text, see parent volume.

#### **Repealing Clause**

Section 2 of Ch. 95, Laws 1965 repealed

#### **Hydrocarbon Inhalation**

Evidence was insufficient to sustain automobile mechanic's allegation that his exposure to concentration of diesel smoke resulted in his contracting emphysema or aggravating a pre-existing emphysema condition because of hydrocarbon inhalation. *Aho v. Burkland Studs, Inc.*, 153 M 1, 452 P 2d 415.

**92-1305. Proximate causation.** Occupational diseases shall be deemed to arise out of the employment only if:

1. to 5. \* \* \* [Same as parent volume.]

**History:** En. Sec. 5, Ch. 155, L. 1959; amd. Sec. 1, Ch. 40, L. 1971.

#### **Amendments**

The 1971 amendment deleted from the introductory clause a reference to the preceding section.

**92-1310. Liability of last employer, exception.** Where compensation is payable for an occupational disease the only employer liable shall be the employer in whose employment the employee was last injuriously exposed to the hazard of such disease, but in the case of silicosis the only employer liable shall be the employer in whose employment the employee was last exposed to harmful quantities of silicon dioxide ( $\text{SiO}_2$ ) dust for a period of ninety (90) actual workshifts or more after July 1, 1958. Provided that in the case of pneumoconiosis any coal mine operator who has acquired a mine in the state or substantially all of the assets thereof, from a person who was an operator of such mine on or after December 30, 1969, is liable for, and must secure the payment of, all benefits which would have been payable by that person with respect to miners previously employed in such mine if acquisition had not occurred and that person had continued to operate such mine; and the prior operator of such mine shall not be relieved of any liability under this section.

**History:** En. Sec. 10, Ch. 155, L. 1959; amd. Sec. 2, Ch. 190, L. 1971.

#### **Amendments**

The 1971 amendment added the proviso relating to pneumoconiosis.

**92-1311. Payment of compensation—exceptions and limitations. A.** Compensation shall be paid to every employee who becomes disabled by reason of occupational disease arising out of his employment, subject to the following conditions; and when claims are presented and notices given in accordance with the limitations of sections 92-1312 and 92-1313.

1. \* \* \* [Same as parent volume.]

2. No compensation shall be paid for a disease other than silicosis or due to ionizing radiation unless total disability results within one



hundred twenty (120) days from the last day upon which the employee actually worked for the employer against whom compensation is claimed; provided that the board upon good cause shown may waive this limitation in the interest of justice, but in any case said period may not be extended to more than one year from the date of last employment by the said employer.

3 to 5. \* \* \* [Same as parent volume.]

B. The compensation shall be paid to the beneficiary and dependents of every employee covered by this act in cases where death results from an occupational disease arising out of his employment subject to the following conditions.

1 to 3. \* \* \* [Same as parent volume.]

4. No compensation shall be paid for death from any occupational disease other than silicosis or due to ionizing radiation unless death results within one (1) year from the last day upon which the employee actually worked for the employer against whom compensation is claimed, except in those cases where death results during a period of continuous total disability from an occupational disease other than silicosis or ionizing radiation for which compensation has been paid or awarded, or for which a claim, compensable but for such death, is on file with the board. In such cases compensation shall be paid if death results within three (3) years from the last day upon which the employee actually worked for the employer against whom compensation is claimed.

5. \* \* \* [Same as parent volume.]

C. \* \* \* [Same as parent volume.]

History: En. Sec. 11, Ch. 155, L. 1959;  
amd. Sec. 1, Ch. 92, L. 1965.

**Amendment**

The 1965 amendment inserted "or due to ionizing radiation" following "silicosis" in paragraphs A 2 and B 4.

**92-1312. Claims must be presented within what time.** The provisions of section 92-601 shall not apply to claims filed under this act.

It is hereby provided in the case of disability resulting from occupational diseases as herein defined, including silicosis, that all claims therefor shall be forever barred unless the same shall be presented in writing under oath to the employer, the insurer or the board as the case may be within thirty (30) days after claimant has filed his notice of disability as provided in section 92-1313. In the case of death from an occupational disease, as herein defined, including silicosis, all claims therefor shall be forever barred unless the same shall be presented in writing under oath to the employer, the insurer, or the board, as the case may be, within thirty (30) days of filing the notice of death as provided in section 92-1313. For the purpose of this act a claim for benefits on account of total disability or death of a miner due to pneumoconiosis is deemed to be timely filed if it is filed within three (3) years of the discovery of the total disability or the date of death.

Claims shall be filed in triplicate on forms to be furnished by the board and may be accompanied by a medical report of the claimant's attending physician. The provisions of this section as to the time for

presenting claims for compensation shall prevail over any other provisions of this act to the contrary.

History: En. Sec. 12, Ch. 155, L. 1959;  
amd. Sec. 3, Ch. 190, L. 1971.

#### Amendments

The 1971 amendment added the last sentence, relating to pneumoconiosis claims, to the first paragraph.

**92-1313. Notice of disability or death.** The provisions of section 92-807 shall not apply to cases of disability or death from occupational diseases as in this act defined.

Notice of disability or death in respect to which compensation is payable under this act, except disability or death resulting from silicosis, shall be given to the employer, the insurer, or the board, as the case may be, within thirty (30) days after the employee, his beneficiaries, or his dependents knew or should have known the nature of the impairment or cause of death and its relationship to the employment, but in no event, except in the case of disability or death due to ionizing radiation, shall notice be filed more than one year after the last day upon which the employee actually worked for the employer against whom compensation is claimed.

In cases of disability resulting from silicosis which are compensable under this act, notice of such disability shall be given to the employer, the insurer, or the board, as the case may be, within thirty (30) days after the employee knew or should have known of the nature of the impairment and its relationship to employment, but in no event shall such notice be filed more than four (4) years after the last date upon which the employee actually worked for the employer against whom compensation is claimed.

In cases of a death from silicosis which is compensable under this act, notice of such death shall be given to the employer, the insurer, or the board, within thirty (30) days after the employee's beneficiaries or his dependents knew or should have known of the cause of death and its relationship to the employment, but in no event shall such notice be filed more than one (1) year after such death.

Such notice shall be valid only if filed in writing on forms to be furnished by the board, and shall contain the name and address of the employee and a statement of the time, place, nature, and cause of the disability or death, and shall be signed by the employee or by some other person on his behalf; or in case of death by any person claiming to be entitled to compensation for such death or by some person on his behalf.

Except if death occurs during the period of total disability described in section 92-1311, B.3., in which case the period of notice may be extended to the term of seven (7) years from the last day of said employment.

History: En. Sec. 13, Ch. 155, L. 1959;      Amendment  
amd. Sec. 2, Ch. 92, L. 1965.

The 1965 amendment inserted "except in the case of disability or death due to ionizing radiation" in the second paragraph.

**92-1315. Procedure for medical examination.** A. In order to determine the validity of claims made pursuant to the provisions of this act, the following procedure and no other shall be followed in the course of the medical examination of the claimant for official report to said board, claimant, employer, or insurer, as the case may be.

1. Upon the filing of a claim by a claimant for occupational disease disability, other than silicosis or pneumoconiosis, the board shall direct a member from said "medical committee" to examine and determine the disability of the claimant and submit a written report thereon to the board.

Upon the filing of a claim for compensation for silicosis disability under this act, the board shall direct an examination of and report to the board upon the claimant by said "pulmonary specialists," or one of them, including such X-ray and other pathological examination and tests as in the opinion of such specialist or specialists may be necessary for the purpose of determining diagnosis, disablement, and the nature and type of medical treatment, hospitalization and other care required. If the claim is not controverted as to any medical fact, the examination and report of one of said specialists, shall be deemed the examination and report of all "pulmonary specialists." If the claim is controverted as to any medical fact, the report shall be made by all of said specialists after a physical examination by at least two (2) of them. The findings and opinions of a majority of the number of said specialists then appointed shall constitute the findings and opinions of all of them. The contents of the report of said "pulmonary specialists" when placed in the record shall constitute prima facie evidence of fact as to the matter therein contained. The "pulmonary specialists" or any one (1) of them making the report shall be subject to examination upon demand of any interested parties.

The "pulmonary specialists," or any one (1) of them in order to assist in reaching a conclusion may require the attending physician or director of a hospital or a sanitarium or other place in which treatment or care is being given, or has been given, to attend at a convenient time and place to consult with said specialists, or any one of them and to describe the nature and type of care and treatment and furnish any other evidence which said specialist or specialists desire.

Upon receiving the written report of such examining physician or physicians so appointed, the board shall forthwith determine whether or not the claimant shall receive the benefits pursuant to this act and it shall forward notice of its determination together with a true and correct copy of said medical report to the claimant and the employer or insurer as the case may be.

2. \* \* \* [Same as parent volume.]

B. The standards for determining death or total disability due to pneumoconiosis are as follows:

1. Total disability defined. A miner is under a total disability due to pneumoconiosis if: (a) He is suffering or suffered from a chronic dust disease of the lung which: (1) when diagnosed by chest roentgenogram, yields one or more large opacities (greater than one centimeter in diam-



eter) and would be classified in category A, B, or C in the international classification of radiographs of the pneumoconioses by the international labor organization; or (2) when diagnosed by biopsy or autopsy, yields massive lesions in the lung, that is, shows the existence of progressive massive fibrosis; or (3) when established by diagnosis by means other than those specified in subparagraphs (1) or (2) of this paragraph, would be a condition which could reasonably be expected to yield the results described in subparagraph (1) or (2) of this paragraph had diagnosis been made as therein prescribed. Provided, however, that any diagnosis made under this clause shall be in accordance with generally accepted medical procedures for diagnosing pneumoconiosis.

(b) (1) He is unable to engage in any substantial gainful activity by reason of pneumoconiosis which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve (12) months; or (2) where the requirements of paragraph (a) of this section are met, the finding that a miner is under a total disability is established by irrebuttable presumption.

2. Evaluating total disability. (a) Total disability may not be found for purposes of this part unless pneumoconiosis is the impairment involved. Whether or not pneumoconiosis in a particular case constitutes a disability as defined in 1. (b) is determined from all the facts of that case. Primary consideration is given to the severity of the individual's pneumoconiosis. Medical considerations alone can, except where other evidence rebuts a finding of "disability," e.g., the individual is actually engaging in substantial gainful activity, justify a finding that the individual is under a disability where his impairment is one that meets the duration requirement in 1. (b), and is listed in the appendix to this subpart.

(b) Pneumoconiosis may be found disabling if it does prevent the individual from engaging in any substantial gainful activity. Such an individual, however, shall be determined to be under a disability only if his pneumoconiosis is the primary reason for his inability to engage in substantial gainful activity. In any such case it must be established that the individual has a respiratory impairment because of pneumoconiosis, demonstrated on the basis of an MVV and FEV<sub>1</sub> which are equal to or less than the values specified in the following table or by a medically equivalent test.

Height (Inches)	MVV(MBC) equal and	FEV <sub>1</sub> equal to or less than
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	L./Min.	L.
57 or less	52	1.4
58	53	1.4
59	54	1.4
60	55	1.5
61	56	1.5

Height (Inches)	MVV(MBC) equal to or less than	and FEV <sub>1</sub> equal to or less than
	L./Min.	L.
62	57	1.5
63	58	1.5
64	59	1.6
65	60	1.6
66	61	1.6
67	62	1.7
68	63	1.7
69	64	1.8
70	65	1.8
71	66	1.8
72	67	1.9
73 or more	68	1.9

3. Evidence of pneumoconiosis. (a) A finding of the existence of pneumoconiosis may not be made in the absence of:

(1) A chest roentgenogram showing the existence of pneumoconiosis classified as category 1, 2, 3, A, B, or C, according to the international labor organization (1958), international labor organization (1968), or union internationale contra cancer/Cincinnati (1968) classifications of the pneumoconioses (if the chest roentgenogram is classified as category Z, it should be reclassified as category O or category 1 and only the latter accepted as evidence of pneumoconiosis); or

(2) An autopsy showing the existence of pneumoconiosis; or

(3) A biopsy (other than a needle biopsy) showing the existence of pneumoconiosis. Such biopsy would not be expected to be performed for the sole purpose of diagnosing pneumoconiosis. Where a biopsy is performed for other purposes, however, (e.g., in connection with a lung resection, the report thereof will be considered in determining the existence of pneumoconiosis.

(b) The roentgenogram, to conform to accepted medical standards, should represent a posterior-anterior view of the chest, taken at a distance of six (6) feet between the X-ray tube and the X-ray film on a 14 by 17 inch X-ray film.

(c) A report of autopsy or biopsy shall include a detailed gross (macroscopic) and microscopic description of the lungs or visualized portions of the lungs. If an operative procedure has been performed to obtain a portion of a lung, the evidence should include a copy of the operative note and the pathology report of the gross and microscopic examination of the surgical specimen. If an autopsy has been performed, the evidence should include a complete copy of the autopsy report.

4. Determining medical equivalence. (a) An individual's impairment shall be determined to be medically the equivalent of an impairment listed in the appendix to this subpart only if the medical findings

with respect thereto are at least equivalent in severity and duration to the listed findings of the listed impairment.

(b) Any decision made under 2. (a) and 6. (a) as to whether an individual's impairment is medically the equivalent of an impairment listed in the appendix to this subpart, shall be based on medical evidence demonstrated by medically acceptable clinical and laboratory diagnostic techniques, including a medical judgment furnished by one or more physicians designated by the board, relative to the question of medical equivalence.

(c) Any decision as to whether a medical test is medically equivalent to the test described in 2. (b) shall be based on appropriate medical evidence, including a judgment furnished by one or more physicians designated by the board, relative to the question of the medical equivalence of such test.

5. Evidence of origin of pneumoconiosis. (a) If a miner was employed for ten (10) years or more in coal mines and is suffering or has suffered from pneumoconiosis, it will be presumed, in the absence of evidence to the contrary, that the pneumoconiosis arose out of such employment.

(b) In any other case, a miner suffering or who has suffered from pneumoconiosis must submit the evidence necessary to establish that the pneumoconiosis arose out of employment in the coal mines.

6. Death due to pneumoconiosis. (a) A miner's death will be determined to have been due to pneumoconiosis if the miner suffered from a chronic dust disease of the lung which meets the requirements of 1. (a); or

(b) If a deceased miner was employed for ten (10) years or more in coal mines and died from a respirable disease, it will be presumed, in the absence of evidence to the contrary, that his death was due to pneumoconiosis. Death will be found due to a respirable disease when death is ascribed to a chronic dust disease, or to another chronic disease of the lung. Death will not be found due to a respirable disease in those cases in which the disease reported does not suggest a reasonable possibility that death was, in fact, due to pneumoconiosis (e.g., cancer of the lung, disease due to trauma, pulmonary emboli); or

(c) Under circumstances other than those in paragraphs (a) or (b) of this section, the claimant must submit the evidence necessary to establish that the miner's death was due to pneumoconiosis and that the pneumoconiosis arose out of employment in coal mines.

History: En. Sec. 15, Ch. 155, L. 1959;  
amd. Sec. 4, Ch. 190, L. 1971.

#### Amendments

The 1971 amendment inserted "or pneumoconiosis" after "other than silicosis" in the first paragraph of subdivision A 1; and added the present subsection B.

**92-1315.1. Medical definition of totally disabling pneumoconiosis.** A miner with pneumoconiosis, as evidenced in 3. of this part, plus one of



the following sets of medical specifications, may be found to be under a total disability, in the absence of evidence rebutting such finding:

(1) Airway obstruction demonstrated on spirogram by MVV and FEV<sub>1</sub> equal to or less than the values specified in the following table:

Height (Inches)	MVV(MBC) equal to or less than	FEV <sub>1</sub> equal to or less than
	L./Min.	L.
57 or less	32	1.0
58	33	1.0
59	34	1.0
60	35	1.1
61	36	1.1
62	37	1.1
63	38	1.1
64	39	1.2
65	40	1.2
66	41	1.2
67	42	1.3
68	43	1.3
69	44	1.3
70	45	1.4
71	46	1.4
72	47	1.4
73 or more	48	1.4

or

(2) Total vital capacity equal to or less than the values specified in the following table:

Height (Inches)	V.C. equal to or less than
	(L.)
57 or less	1.2
58	1.3
59	1.3
60	1.4
61	1.4
62	1.5
63	1.5
64	1.6
65	1.6
66	1.7
67	1.7
68	1.8
69	1.8

Height (Inches)	V.C. equal to or less than
--------------------	-------------------------------

	(L.)
70	1.9
71	1.9
72	2.0
73 or more	2.0

or

(3) Diffusing capacity of the lungs for carbon monoxide less than 6 ml./mm. Hg./min. (steady-state methods) or less than 9 ml./mm. Hg./min. (single-breath methods) or less than thirty per cent (30%) of predicted normal (all methods—actual value and predicted normal for the method used should be reported); or

(4) Arterial oxygen saturation at rest and simultaneously determined arterial p CO<sub>2</sub> equal to, or less than, the values specified in the following table:

Arterial p CO <sub>2</sub>	and	Arterial O <sub>2</sub> saturation equal to or less than (%)
----------------------------	-----	---

30 mm.Hg. or below	93
31 mm.Hg.	93
32 mm.Hg.	92
33 mm.Hg.	92
34 mm.Hg.	91
35 mm.Hg.	91
36 mm.Hg.	90
37 mm.Hg.	89
38 mm.Hg.	88
39 mm.Hg.	88
40 mm.Hg. or above	87

(5) Cor pulmonale with right-sided congestive failure as evidenced by peripheral edema and liver enlargement, with:

(A) Right ventricular enlargement or outflow tract prominence on X-ray or fluoroscopy; or

(B) ECG showing QRS duration less than 0.12 second and R of 5 mm. or more in V<sub>1</sub> and R/S of 1.0 or more in V<sub>1</sub> and transition zone (decreasing R/S) left of V<sub>1</sub>; or

(6) Congestive heart failure with signs of vascular congestion such as hepatomegaly or peripheral or pulmonary edema, with:

(A) Cardio-thoracic ratio of fifty-five per cent (55%) or greater, or equivalent enlargement of the transverse diameter of the heart, as shown on teleroentgenogram (6-foot film); or

(B) Extension of the cardiac shadow (left ventricle) to the vertebral column on lateral chest roentgenogram and total of S in V<sub>1</sub> or V<sub>2</sub> and R in V<sub>5</sub> or V<sub>6</sub> of 35 mm. or more on ECG.

**History:** En. Sec. 5, Ch. 190, L. 1971.

**Title of Act**

An act to provide revisions to "The Occupational Disease Act of Montana" in compliance with the mandate of the Congress of the United States as required by the provisions of Public Law 91-173 of the Ninety-first Congress; and providing for the payment of benefits for total disability or death to a coal miner due to defined pneumoconiosis substantially to, or greater than, the amount of benefits prescribed by said public law and to prescribe standards and definitions for determining death or total disability due to pneumoconiosis, which are substantially equivalent to those established by said public law and regulations by the secretary of health, education and welfare; and providing for the submission of any claim for benefits within three years of

discovery of total disability or death from said disease; and providing for the liability of prior and successor operators for all benefits for miners at such mine on or after December 30, 1969; amending section 92-1303, R. C. M., 1947, relating to definitions of disablement and pneumoconiosis; amending section 92-1310, R. C. M., 1947, relating to liability of last employer; amending section 92-1312, R. C. M., 1947, relating to time in which a claim may be presented; amending section 92-1315, R. C. M., 1947, relating to procedure for medical examination; amending section 92-1321, R. C. M., 1947, relating to compensation benefits payable under said act; and providing an appendix setting forth appropriate charts for determination of disability and providing standards for interpretation thereof; and providing an effective date.

**92-1321. Compensation benefits payable under this act.** The compensation to which an employee temporarily totally disabled or permanently totally disabled by an occupational disease, or his beneficiaries and dependents in the case of death caused by an occupational disease, shall be entitled to under this act shall be the same payments which are payable to an injured employee, and such payments shall be made for the same period of time, as is provided in cases of temporary total disability, permanent total disability and in cases of injuries causing death under the Workmen's Compensation Act of the state of Montana. Benefit payments for total disability or death due to pneumoconiosis shall, for the purpose of this act, be made as follows:

a. In the case of total disability of a miner due to pneumoconiosis the disabled miner shall be paid benefits during the disability at the rate of one hundred fifty-five dollars (\$155) per month.

b. In the case of death of a miner due to pneumoconiosis or of a miner receiving benefits under this part, benefits shall be paid to his widow (if any) at the rate the deceased miner would receive such benefits if he were totally disabled.

c. In the case of an individual entitled to benefit payments under clause a. or b. who has one or more dependents, the benefit payments shall be increased at the rate of fifty per centum (50%) of such benefit payments, if such individual has one (1) dependent, seventy-five per centum (75%) if such individual has two (2) dependents, and one hundred per centum (100%) if such individual has three (3) or more dependents.

**History:** En. Sec. 21, Ch. 155, L. 1959; amd. Sec. 6, Ch. 190, L. 1971.

**Amendments**

The 1971 amendment added the last sentence, including the lettered subdivisions relating to pneumoconiosis, at the end of the section.

**Repealing Clause**

Section 7 of Ch. 190, Laws 1971 repealed all acts and parts of acts in conflict therewith.

**Separability Clause**

Section 8 of Ch. 190, Laws 1971 read "If a part of this act is invalid, all valid



parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

**Effective Date**

Section 9 of Ch. 190, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 3, 1971.

**92-1334. Compensation plans.****Cross-References**

Investment functions of board transferred, sec. 82A-205(3).

**CHAPTER 14—REHABILITATION OF INJURED WORKMEN**

Section 92-1403. Expenses payable to workman receiving training.

**92-1403. Expenses payable to workman receiving training.** The eligibility of any injured workman to receive other benefits under the Workmen's Compensation Act of the state of Montana shall in no way be affected by his entrance upon a course of vocational rehabilitation as herein provided, but he may be paid, in addition thereto, upon the certification of the vocational rehabilitation division from funds herein provided, (1) his actual and necessary travel expenses from his place of residence to the place of training, and return, (2) his living expenses while in training in an amount not in excess of fifty dollars (\$50) per week, his expenses for tuition, books and necessary equipment in training.

**History:** En. Sec. 3, Ch. 21, L. 1961; amd. Sec. 1, Ch. 363, L. 1971.

**Amendments**

The 1971 amendment, substituted "may" for "shall" before "be paid"; deleted "away from home" after "while in training"; and increased the weekly living expense allowance from \$30 to \$50.



# REVISED CODES OF MONTANA

## VOLUME 7

### 1971 Cumulative Pocket Supplement

#### *Containing*

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE  
LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF  
REPLACEMENT VOLUME 7 OF THE  
1947 REVISED CODES

#### AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 7  
THROUGH VOLUME 478, PACIFIC  
REPORTER (2ND SERIES)

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## CHAPTER 2—SUPREME COURT

### 93-216. (8805) Powers and duties of supreme court on appeals.

#### Equity Case

In an equity case it is proper for the appellate court to pry into the factual issues of the case and the decision must hinge on factual observations unless the case is returned to the lower court for

further proceedings. *Jenson v. Olson*, 144 M 224, 395 P 2d 465, 468.

The supreme court in reviewing an equity case will review the law therein and also will review the evidence to that extent necessary to ascertain whether the

findings of fact by the trial court are substantially supported and sufficient to support the conclusions of law derived therefrom. *Bender v. Bender*, 144 M 470, 397 P 2d 957.

Supreme court in equity case not only has function of reviewing law involved but also reviews evidence to extent of determining whether findings of fact by trial court are supported by substantial evidence. *White v. Nollmeyer*, 151 M 387, 443 P 2d 873.

#### Nuisance Cases

Supreme court will not hesitate to set aside lower court finding that nuisance exists where there is no substantial evidence on which to base finding. *Kasala v. Kalispell Pee Wee Baseball League*, 151 M 109, 439 P 2d 65, 32 ALR 3d 1120.

#### Probate Proceedings

Supreme court reversed where evidence did not support district court finding that will was drafted at direction of decedent and that he was aware of its contents when he signed. *Erickson v. Erickson*, 152 M 179, 448 P 2d 144.

#### Remand to District Court

Trial court abused discretion in dismissing action for failure of plaintiff to prosecute case returned by supreme court to lower court for new trial where trial court failed to set trial for next jury term as per order of supreme court under statute providing that supreme court may direct new trial. *Jangula v. United States Rubber Co.*, 149 M 241, 425 P 2d 319.

#### Scope of Review

Function of supreme court on review is to determine whether there is substantial evidence to support findings of fact and conclusions of law. *Peery v. Higgins*, 152 M 140, 447 P 2d 481.

Review of evidence is limited to determining whether there is substantial evidence to support trial court's findings of fact and whether such findings are sufficient to support conclusions of law. *Keller v. Martin*, 153 M 9, 452 P 2d 422.

#### References

*Kyser v. Hiebert*, 142 M 466, 385 P 2d 90; *State ex rel. Keast v. Krieg*, 147 M 164, 410 P 2d 710.

## CHAPTER 3—DISTRICT COURTS

### Section 93-303. Salaries of district judges.

93-303. (8814) Salaries of district judges. The annual salary of each district judge shall be nineteen thousand dollars (\$19,000).

**History:** En. Sec. 1, Ch. 176, L. 1919; re-en. Sec. 8814, R. C. M. 1921; amd. Sec. 1, Ch. 114, L. 1947; amd. Sec. 1, Ch. 84, L. 1951; amd. Sec. 1, Ch. 247, L. 1955; amd. Sec. 1, Ch. 198, L. 1959; amd. Sec. 1, Ch. 187, L. 1961; amd. Sec. 2, Ch. 212, L. 1963; amd. Sec. 2, Ch. 308, L. 1967; amd. Sec. 1, Ch. 322, L. 1969.

#### Amendments

The 1967 amendment increased from \$14,000 to \$15,000 the annual salary for district judges.

The 1969 amendment increased the annual salary from \$15,000 to \$19,000.

#### Repealing Clause

Section 3 of Ch. 308, Laws 1967 repealed all acts and parts of acts in conflict therewith.

### 93-320. (8831) Process.

#### References

*Beavers v. Rankin*, 142 M 570, 385 P 2d 640.

## CHAPTER 4—JUSTICES' AND POLICE COURTS

### 93-407. (8839) Repealed.

#### Repeal

This section (Sec. 1, p. 99, L. 1901; Sec. 1, Ch. 35, L. 1921), relating to the oath and bond of the justice of the peace, was

repealed by Sec. 10, Ch. 68, Laws 1967. For new provisions relating to bonds of county officers and employees, see sec. 6-203 et seq.

**93-410. (8842) Criminal jurisdiction.****Driving While under Influence of Intoxicating Liquor**

Since the offense of driving a vehicle on a highway while under the influence of intoxicating liquor in violation of sec-

tion 32-2142 is a misdemeanor, it falls within the jurisdiction of a justice of the peace under this section. *Wilson v. Brodie*, 148 M 235, 419 P 2d 306, 308.

**CHAPTER 9—DISQUALIFICATION OF JUDICIAL OFFICERS**

Section 93-901. Cases in which judge may be disqualified—calling in another judge.

**93-901. (8868) Cases in which judge may be disqualified—calling in another judge.** Any justice, judge, or justice of the peace must not sit or act as such in any action or proceeding:

1. To which he is a party, or in which he is interested;
2. When he is related to either party by consanguinity or affinity within the sixth degree, computed according to the rules of law;
3. When he has been attorney or counsel for either party in the action or proceeding, or when he rendered or made the judgment, order, or decision appealed from;
4. When either party makes and files an affidavit as hereinafter provided, that he has reason to believe, and does believe, he cannot have a fair and impartial hearing or trial before a district judge. Such affidavit may be made by any party to an action, motion, or proceeding, personally, or by his attorney or agent, and shall be filed with the clerk of the district court in which the same may be pending.

In any judicial district having only one judge the affidavit of disqualification with reference to any action or proceeding to be tried before a jury must be filed at least one day before the day appointed or fixed by the court for setting the trial calendar; provided, however, this limitation shall not apply unless notice of such setting date shall be given to all parties by the clerk of the district court at least fifteen (15) days prior thereto. In all other cases the affidavit must be filed at least fifteen (15) days before the day appointed or fixed for the hearing or trial of any such action, motion, or proceeding (provided such party shall have had notice of the hearing of such action, motion, or proceeding for at least the period of fifteen (15) days and in case he shall not have had notice for such length of time, he shall file such affidavit immediately upon receiving such notice). Upon the filing of the affidavit, the judge as to whom said disqualification is averred shall be without authority to act further in the action, motion, or proceeding, but the provisions of this section do not apply to the arrangement of the calendar, the regulation of the order of business, the power of transferring the action or proceeding to some other court nor to the power of calling in another district judge to sit and act in such action or proceeding, providing that no judge shall so arrange the calendar as to defeat the purposes of this section. No more than two judges can be disqualified in said action or proceeding, at the instance of the plaintiff, and no more than two at the instance of the defendant, in said action or proceeding, and this limitation shall apply however many parties or persons in interest may be plaintiffs or



defendants in such action or proceeding. If there be more than one judge in any judicial district in which said affidavit is made and filed, upon the first disqualification of a judge in the cause, another judge, residing in the judicial district wherein the affidavit is made and filed, must be called in to preside in such action, motion or proceeding; upon the second or any subsequent disqualification of a judge in the cause, a district judge of another judicial district of the state must be called in to preside in such action, motion, or proceeding, or the action, motion, or proceeding transferred to a district judge of another judicial district of the state; when another judge has assumed jurisdiction of an action, motion, or proceeding, the clerk of the district court in which the same was pending, shall at once notify the parties or their attorneys of record in the same, either personally or by registered mail, of the name of the judge called in, or to whom such action, motion, or proceeding was transferred. Such second or subsequent affidavit of disqualification shall be filed with the clerk of the district court in which such action, motion or proceeding may be pending within three days after the party or his attorney of record, filing such affidavit, has received notice as to the judge assuming jurisdiction of such action, motion, or proceeding.

**History:** Ap. p. Sec. 453, p. 134, Bannack Stat.; re-en. Sec. 610, p. 159, Cod. Stat. 1871; re-en. Sec. 530, p. 179, L. 1877; re-en. Sec. 530, 1st Div. Rev. Stat. 1879; re-en. Sec. 547, 1st Div. Comp. Stat. 1887; amd. Sec. 180, C. Civ. Proc. 1895; amd. Ch. 3, 2nd Ex. L. 1903; re-en. Sec. 6315, Rev. C. 1907; amd. Sec. 1, Ch. 114, L. 1909; re-en. Sec. 8868, R. C. M. 1921; amd. Sec. 1, Ch. 93, L. 1927; amd. Sec. 1, Ch. 218, L. 1961; amd. Sec. 1, Ch. 82, L. 1963; amd. Sec. 1, Ch. 234, L. 1965. Cal. C. Civ. Proc. Sec. 170.

#### Amendment

The 1965 amendment deleted "by reason of the bias or prejudice of such judge" at the end of the first sentence of subdivision 4; divided subdivision 4 into two paragraphs; and made a minor change in punctuation.

#### Repealing Clause

Section 2 of Ch. 234, Laws 1965 repealed all acts and parts of acts in conflict therewith.

#### Effective Date

Section 3, of Ch. 234, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 8, 1965.

#### Constitutionality

The 1965 amendment of this section, deleting the words "by reason of the bias and prejudice of such judge," does not impair the constitutionality of this section, since the affidavit will still be required to state that the party has reason to believe and does believe he cannot have a fair and

impartial hearing or trial before the district judge. State ex rel. Peery v. District Court, 145 M 287, 400 P 2d 648.

This section does not violate the separation of powers provision of section 1, article IV of the Montana constitution in that it does not impinge upon the existence or supremacy of the judicial system nor alter its jurisdiction or duties, but is a reasonable manner of providing a fair trial for all litigants. State ex rel. Peery v. District Court, 145 M 287, 400 P 2d 648.

#### Compelling Disqualification

Where district court judge attempted to comply with affidavit of disqualification, but was unsuccessful in calling in a district court judge from another judicial district, and was also unsuccessful in attempting to comply with order to show cause, mandamus proceedings against him were dropped but not against a second district court judge who believed he had original jurisdiction and challenged the constitutionality of this section. State ex rel. Peery v. District Court, 145 M 287, 400 P 2d 648.

#### Custody Award

District court judge was without jurisdiction to award custody where affidavits of disqualification were filed prior to court's final disposition of various motions even though motion for new trial was pending. State ex rel. Ross v. District Court, 150 M 233, 433 P 2d 778.

#### Mandamus

Mandamus is the appropriate remedy to compel a disqualified judge to perform a

mandatory duty resting upon him to call in another judge or transfer the cause to another department or court. State ex rel. Peery v. District Court, 145 M 287, 400 P 2d 648.

### New Trial

This section should not be construed to permit disqualification of a judge pending motion for a new trial because of the provisions of Rule 59(d), M. R. Civ. P. State ex rel. Peery v. District Court, 145 M 287, 400 P 2d 648.

### Remanded Cause

District judge should have honored affidavit of disqualification filed more than four months before day fixed for hearing where mandate of supreme court in remanding cause left it to the district court to make a determination as to the amount due the plaintiffs in the event that sum

was not settled between the parties themselves. State ex rel. Gage v. District Court, 148 M 284, 419 P 2d 746, 747.

### Time for Disqualification

Statutory time for filing affidavit was not extended because counsel learned of trial only day before it began, since under this section attorney's right to request disqualification is derived from party's right and is not an independent right. State ex rel. Kidder v. District Court of Fourth Judicial District In and For County of Sanders, — M —, 472 P 2d 1008.

### References

State ex rel. Wilson v. District Court, 143 M 543, 393 P 2d 39; State ex rel. McNeal v. District Court, 144 M 550, 399 P 2d 997; State ex rel. Kinman v. District Court, 146 M 74, 404 P 2d 517.

## CHAPTER 11—MISCELLANEOUS PROVISIONS RESPECTING COURTS AND JUDICIAL OFFICERS

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 93-1127. Nomination of beneficiary.  
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 93-1130. Call of retired judge for duty.  
 93-1131. Optional retirement allowance.  
 93-1132. Transfer of dormant accounts to pension accumulation fund.

### 93-1101. (8877) Subsequent applications for orders refused, etc.

#### References

Weinheimer v. Scott, 143 M 243, 388 P 2d 790.

### 93-1102. (8878) Violations of preceding section.

#### Frivolous Appeal

Where attorney specified as error in his appellate brief in a second action, the same point raised in his complaint in a previous action involving the same parties,

the appeal was frivolous and damages were assessed in favor of the respondents. Weinheimer v. Scott, 143 M 243, 388 P 2d 790.

**93-1107. Judges' retirement system—definitions.** The following words and phrases as used in this act, unless a different meaning is plainly implied by the context, shall have the following meanings:

"Accumulated deductions"—the total of the amounts deducted from the salary of a contributor and paid into the fund, and standing to his credit in the fund, together with the regular interest thereon.

"Beneficiary"—shall be such person or persons having an insurable interest in his life as he shall nominate by written designation, duly acknowledged and filed with the board.

"Retired judge"—any person in receipt of a retirement allowance under this act.

"Board"—the Montana judges' retirement board.

"Penalty retirement age"—seventy (70) years of age.

"Contributor"—any person who has accumulated deductions in the fund standing to his credit.

"Final salary"—the annual salary for the office retired from as of the date of retirement.

"Actuarial equivalent"—the accumulated contributions and the present value of the member's state service based on length of service and member's attained age used to provide a life or temporary life income to the legally designated person, based on such person's attained age and sex at the time the option becomes available.

"Fund"—the Montana judges' retirement fund.

"Involuntary retirement"—a retirement not for cause and before retirement age.

"Member's annuity"—payments for life derived from contributions made by the contributor.

"Retirement allowance"—the state annuity plus the member's annuity.

"State annuity"—payments for life derived from contributions made by the state of Montana.

**History:** En. Sec. 1, Ch. 289, L. 1967; amd. Sec. 1, Ch. 218, L. 1969.

#### Compiler's Notes

Chapter 218, Laws 1969 was passed by the constitutional majority of both houses of the 41st legislative assembly over the veto of the governor.

#### Title of Act

An act relating to the judicial department of the state of Montana; providing for the retirement of district judges and justices of the supreme court, subject to thereafter being called into service for the performance of certain judicial duties under the direction of the supreme court and providing an allowance of actual expenses for such service; defining the terms used in this act; establishing a Montana judges' retirement system; creating a Montana judges' retirement board; providing for payment of the expense of administering this act, and for payments into the Montana judges' retirement fund; providing for the establishment and en-

forcement of rules and regulations; requiring membership in public employees' retirement system and for payments thereto by each judge not heretofore a member thereof; providing a service allowance based on length of service; requiring payments into the Montana judges' retirement fund by deductions from members' salaries; providing for contributions by the state of Montana, and for payment into the Montana judges' retirement fund of one-quarter of fees collected by clerks of district court and by the clerk of the supreme court; specifying length of service and age requirements necessary for retirement; providing the method of computing retirement allowance; providing for a disability retirement allowance and an involuntary retirement allowance; specifying penalty retirement age and providing for a retirement allowance forfeiture; providing for payments upon death; providing for monthly payments of retirement allowances, for exemption from taxes and execution, for nomination of beneficiary,



and for options available to judges entering military service; providing certain optional methods of payment of retirement allowance; providing for transfer of accounts dormant for ten (10) years; and providing a savings clause declaring the provisions of this act to be severable.

#### Amendments

The 1969 amendment rewrote the definition of "Final salary" which was formerly defined as "the annual current salary for the office retired from."

**93-1108. Montana judges' retirement system.** A retirement system is hereby established for the judges of the district court and justices of the supreme court of the state of Montana.

**History:** En. Sec. 2, Ch. 289, L. 1967.

**93-1109. Montana judges' retirement board.** There is hereby created a Montana judges' retirement board, hereinafter referred to as the "board." The board shall consist of five (5) members who shall be the same persons as those who compose the board of administration of the public employees' retirement system.

**History:** En. Sec. 3, Ch. 289, L. 1967.

**93-1110. Administrative expenses.** (1) The expense of the administration of this act, exclusive of the payment of retirement allowances and other benefits, shall be paid from the Montana judges' retirement account.

(2) Before July 15, 1970 and before July 15 of each year thereafter, the board shall compute the administrative costs for the immediately preceding fiscal year and transfer that amount from the Montana judges' retirement account to the public employees' retirement system account in the earmarked revenue fund.

**History:** En. Sec. 4, Ch. 289, L. 1967; amd. Sec. 1, Ch. 23, L. 1969.

#### Amendments

The 1969 amendment designated the former section as subsection (1), and substituted "from the Montana judges' re-

tirement account" for "by the state of Montana, by appropriation out of the general fund, made on the basis of budgets submitted by the board" at the end and added subsection (2).

**93-1111. Payments into the Montana judges' retirement fund—investment.** All appropriations made by the state of Montana, all contributions by members of the Montana judges, in the amount hereinafter specified, and all interest on and increase of the investments and moneys under this account shall be paid to the secretary of the public employees' retirement system board (PERS), who shall credit said payments to the Montana judges' retirement fund. Said funds may be co-mingled with funds of the PERS, but shall be earmarked as judges' retirement fund.

**History:** En. Sec. 5, Ch. 289, L. 1967.

**93-1112. Rules and regulations—actuarial data.** The board may establish such rules and regulations as it deems necessary and is charged within the limitations of this act for its proper administration, operation, and enforcement, and shall be the authority under this act for its proper administration, operation, and enforcement, and shall be the authority

under this act as to the conditions under which persons may be admitted to and continue to receive benefits under the retirement system. It shall keep such data as shall be necessary for actuarial valuation purposes. It shall cause to be made periodic actuarial investigations into the mortality and service experience of the contributors to and the beneficiaries of the fund, and shall adopt for the retirement system one or more mortality tables.

**History:** En. Sec. 6, Ch. 289, L. 1967.

**93-1113. Membership.** (a) Any judge or justice, who has, previous to the adoption of this act, been a member of the PERS, may elect to remain under that system; such election to be made in writing to the PERS board within three (3) months after the effective date of this act.

(b) Every judge or justice who was in service in either a district court or a supreme court of the state of Montana, prior to July 1, 1967, shall have the option and he may elect to make back payments to the date when he first entered the service of the judiciary. Such back payments may be spread over a period of five (5) years by having the regular payroll deduction of the contributor increased in an amount equal to the total of his back payments divided by sixty (60), which deduction increase shall be credited to such back payments owing, and shall be continued until the full amount of such back payments shall have been completed. Any such deduction increase may be anticipated in part or in full by the contributor at any time and must be anticipated in full at the time of retirement before a retirement allowance is granted, and if not so anticipated and paid in full then a member's retirement allowance shall be calculated for the total years and months on which contributions have been made in accordance with section 12 [93-1118] of this act. Every contributor who shall elect to make such back payments shall receive full credit under this act for all contributions made into the fund and for all service credits to which he might thereby be entitled.

**History:** En. Sec. 7, Ch. 289, L. 1967.

**93-1114. Service allowance.** In computing the length of service of a contributor for retirement purposes, full credit shall be given to each contributor for each year of service rendered to the judiciary including service rendered prior to July 1, 1967, upon complying with the provisions of this act. As soon as practicable, the retirement board shall issue to each original member a certificate certifying the aggregate length of his service prior to July 1, 1967. Such certificate shall be final and conclusive as to his prior service unless thereafter modified by the board upon application of the contributor.

**History:** En. Sec. 8, Ch. 289, L. 1967.

**93-1115. Payments by contributors.** Every member shall be required to contribute into the fund a sum equal to six per cent (6%) of his monthly salary, which sum shall be deducted from his salary and credited to his account in the fund.

**History:** En. Sec. 9, Ch. 289, L. 1967.

**93-1116. Contributions by the state of Montana.** The state of Montana shall monthly contribute to the fund a sum equal to six per cent (6%) of the salary of each member of the Montana judiciary retirement system. In addition to the above, three-quarters ( $\frac{3}{4}$ ) of the fees collected under section 25-232, as amended, and section 25-233, as amended, shall be paid into the county treasurer on the first Monday of each month as provided in section 25-203, and the other one-quarter shall be transmitted by the clerk to the secretary of the PERS board on the first Monday of each month, and by him credited to the judicial retirement fund. The fees collected under section 82-503, as amended, shall be by the clerk of the supreme court paid by him, three-quarters ( $\frac{3}{4}$ ) into the state treasury to be credited to the general fund, and one-quarter ( $\frac{1}{4}$ ) of which shall be paid by him to the secretary of the PERS board, which shall be credited to the credit of the judicial retirement fund. The full amount of such fund as created and accumulated is hereby set aside to be used exclusively for the purpose of paying the accrued retirement and expenses provided for herein.

**History:** En. Sec. 10, Ch. 289, L. 1967.

**93-1117. Vesting of proportional retirement.** Any member who has completed at least five (5) years or more service, and has reached the age of sixty-five (65), may retire and receive the proportional retirement allowances provided in section 12 [93-1118].

**History:** En. Sec. 11, Ch. 289, L. 1967.

**93-1118. Retirement allowance.** Upon retirement from service a member shall receive a service retirement allowance which shall consist of the state annuity plus the member's annuity. The member's annuity shall be the actuarial equivalent of his aggregate contributions at the time of retirement and the state annuity shall be in an amount which, when added to the member's annuity, will provide a total retirement allowance of three and one-third per cent ( $3\frac{1}{3}\%$ ) per year of his final salary for the first fifteen (15) years' service, and one per cent (1%) per year for each year's service thereafter.

**History:** En. Sec. 12, Ch. 289, L. 1967.

**93-1119. Disability retirement allowance.** In case of the total disability of a contributor, permanent in character, regardless of length of service of the contributor, a disability retirement allowance shall be granted the contributor in an amount calculated on the actuarial equivalent of the member's annuity and the state annuity standing to his credit at the time of his disability retirement; provided, that if such total disability is a direct result of any service to the Montana judiciary in line of duty, then such judge or justice who is totally and permanently disabled shall be retired on total retirement allowance of a minimum of one-half ( $\frac{1}{2}$ ) of his final salary or the allowance provided in section 12 [93-1118], whichever is greater. In the event of any disability not caused in the line of duty after attaining the age of sixty (60) years, the maximum monthly pay-



ment shall be the retirement allowance as provided in section 12 [93-1118].

**History:** En. Sec. 13, Ch. 289, L. 1967.

**93-1120. Involuntary retirement allowance.** Should a contributor be discontinued from service, not voluntarily, after having completed five (5) years of total service, but before reaching retirement age, he shall, upon filing of application in the manner herein provided for retirement, be paid as he may elect as follows:

(a) the full amount of accumulated deductions standing to his credit;  
or

(b) a member's annuity of equivalent actuarial value to his accumulated deductions standing to his credit, plus the actuarial equivalent of a state annuity having a value equal to the present value of a state annuity then standing to his credit.

**History:** En. Sec. 14, Ch. 289, L. 1967.

**93-1121. Penalty retirement allowance.** Any judge or justice who becomes eligible for retirement hereunder, but fails to make application therefor, prior to his attaining the age of seventy (70) years, shall automatically waive all retirement benefits, and shall receive a return of only such moneys equal to the accumulated deduction contributed by him; save and except that any judge or justice, who is over the age of seventy (70) years, at the time of the effective date of this act, or who shall attain such age before the expiration of his term, shall be permitted to serve out the balance of his existing term, without forfeiting said retirement. At the termination of the said existing term, if such member has failed to make application for retirement under this act, he shall automatically waive all retirement benefits hereunder, and shall receive a return of only such moneys equal to the accumulated deduction contributed by him.

**History:** En. Sec. 15, Ch. 289, L. 1967.

**Compiler's Notes**

This act became effective July 1, 1967.

**93-1122. Refunds in case of resignation or discharge.** Where a contributor resigns of his own volition, or is discharged for cause before becoming entitled to a retirement allowance, then the deductions standing to his credit shall be paid to him.

**History:** En. Sec. 16, Ch. 289, L. 1967.

**93-1123. Payments upon death.** If the board shall find that a contributor died as a direct and proximate result of injury received in the course of his employment, a retirement allowance shall be paid to his beneficiary. Such retirement allowance shall consist of:

(a) a member's annuity which shall be the actuarial equivalent of the contributor's accumulated deductions standing to his credit; and

(b) the actuarial equivalent of a state annuity which when added to the member's annuity will provide a total annuity equal to the allowance provided for in section 12 [93-1118].

**History:** En. Sec. 17, Ch. 289, L. 1967.

93-1124. **Payments in case of death from natural cause.** (a) If the retired judge or justice dies before receiving in payments the present value of his member's annuity and the state annuity as it was at the time of his retirement, the balance shall be paid to his beneficiary.

(b) If a member dies before reaching retirement age, his beneficiary shall be entitled to the actuarial equivalent of the options as provided in section 14 [93-1120].

**History:** En. Sec. 18, Ch. 289, L. 1967.

93-1125. **Monthly payments of retirement allowances.** The retirement allowances granted under the provisions of this act shall be paid in equal monthly installments and shall not be increased, decreased, revoked or repealed unless by act of the legislative assembly of the state of Montana. No retirement allowances can be approved by the board while the member is drawing full compensation as a judge or justice.

**History:** En. Sec. 19, Ch. 289, L. 1967.

93-1126. **Exemption from taxes and execution.** Any money received or to be paid as a member's annuity, state annuity or return of deductions or the right of any of these, shall be exempt from any state or municipal tax and from levy, sale, garnishment, attachment or any other process whatsoever and shall be unassignable.

**History:** En. Sec. 20, Ch. 289, L. 1967.

93-1127. **Nomination of beneficiary.** Every contributor shall have the authority to name his beneficiary by written designation duly acknowledged and filed with the board.

**History:** En. Sec. 21, Ch. 289, L. 1967.

93-1128. **Service in the armed forces of the United States.** Any member of the Montana judiciary now in or hereafter inducted into the armed forces of the United States, shall have the option:

(a) to continue his payments into the fund; or

(b) allow the board to make his payments for him during such military service, in which event he shall repay the fund the full amount of such payments upon his return to the Montana judiciary, and such repayments must be made within two (2) years after his return to the judiciary provided that a member's service in the armed forces of the United States shall be credited to and made a part of the member's service allowance.

**History:** En. Sec. 22, Ch. 289, L. 1967.

93-1129. **Fraud—correction of errors.** (a) No person shall knowingly make any false statement, or shall falsify or permit to be falsified any record or records of the retirement system herein established in any attempt to defraud such system.

(b) Should any such change in records fraudulently made or any mistake in records inadvertently made result in any contributor or beneficiary receiving more or less than he would have been entitled to had the records been correct, then, on the discovery of such error, the board

shall correct such error and shall adjust the payments which shall be made to the contributor or annuitant in such manner that the actuarial equivalent of the benefit to which he was correctly entitled shall be paid.

Any person violating any of the provisions of subsection (a) of this section shall be guilty of a misdemeanor, and, upon conviction, shall be sentenced to pay a fine not exceeding one thousand dollars (\$1,000) or suffer imprisonment not exceeding one (1) year, or both, in the discretion of the court.

History: En. Sec. 23, Ch. 289, L. 1967.

**93-1130. Call of retired judge for duty.** Every judge or justice receiving retirement pay under the provisions of this act, shall, if physically and mentally able, be subject to call by the supreme court or the chief justice thereof to aid and assist the supreme court or any district court under such directions as the supreme court may give, including the examination of the facts and cases before the court, the examination of authorities cited and the preparation of opinions for and on behalf of the court, which opinions, when and if and to the extent approved by the court, may by the court be ordered to constitute the opinion of such court and such court and such retired judge or justice may, subject to any rule which the supreme court may adopt, perform any and all duties preliminary to the final disposition of cases in so far as not inconsistent with the constitution of the state. Such retired judge or justice when called to service as herein provided shall be reimbursed for his actual expenses, if any, in responding to such call.

History: En. Sec. 24, Ch. 289, L. 1967.

**93-1131. Optional retirement allowance.** Until the first payment on account of any retirement allowance is made and subject to the conditions that, if he die after retirement and within thirty (30) days from the date upon which his election or changed election is received at the office of the retirement board, then said election is void and of no effect, and the death shall be considered as that of a member before retirement. A member or a beneficiary may elect, or revoke or change a previous election prior to the approval of the previous election to receive the actuarial equivalent of his retirement allowance as of the date of retirement, in a lesser retirement, allowance, payable throughout life with one of the following options:

Option 1. Upon his death, his lesser retirement allowance shall be continued throughout the life of and paid to such person, having an insurable interest in his life, as he nominates by written designation duly executed and filed with the board at the time of his retirement.

Option 2. Upon his death, one-half ( $\frac{1}{2}$ ) of his lesser retirement allowance shall be continued throughout the life of and paid to such person, having an insurable interest in his life, as he nominates by written designation duly executed and filed with the board at the time of his retirement.

Option 3. Such other benefit or benefits shall be paid, either to the beneficiary or to such other person or persons as he nominates, as,



together with such lesser retirement allowance, are the actuarial equivalent of his retirement allowance, and shall be approved by the board.

**History:** En. Sec. 25, Ch. 289, L. 1967.

**93-1132. Transfer of dormant accounts to pension accumulation fund.** The board may in its discretion transfer the savings account of a member to the pension accumulation fund if the account has been dormant for a period of ten (10) years, provided that no right of the member shall be jeopardized by such transfer and the savings account shall be transferred to the member's name upon subsequent re-entry to membership.

**History:** En. Sec. 27, Ch. 289, L. 1967.

#### **Separability Clause**

Section 26 of Ch. 289, Laws 1967 read "The provisions of this act are severable, and, if any of its provisions shall be held to be unconstitutional, the decision of the

court shall not affect or impair any of the remaining provisions. It is hereby declared to be the legislative intent that this act would have been adopted had such unconstitutional provisions not been included herein."

## **CHAPTER 12—JURIES—DIFFERENT KINDS DEFINED**

Section 93-1205. Number of a trial jury.

**93-1205. (8887) Number of a trial jury.** A trial jury consists of twelve (12) persons; provided, that in civil actions and cases of misdemeanor, it may consist of twelve (12), or any number less than twelve (12), upon which the parties may agree in open court, and further provided that in all civil actions where the relief asked for in the complaint is under the sum of ten thousand dollars (\$10,000), then a trial jury may in the discretion of the trial judge consist of six (6) persons, and that two-thirds ( $\frac{2}{3}$ ) of the jury may render a verdict; provided further, that where a six (6) person jury is authorized by law, each side shall have two (2) peremptory challenges, and they shall be exercised by the plaintiff first striking one (1), and the defendant then striking one (1), and so on, until each side has exhausted or waived his rights.

**History:** En. Sec. 224, C. Civ. Proc. 1895; re-en. Sec. 6334, Rev. C. 1907; re-en. Sec. 8887, R. C. M. 1921; amd. Sec. 4, Ch. 203, L. 1939; amd. Sec. 1, Ch. 293, L. 1971. Cal. C. Civ. Proc. Sec. 194.

#### **Amendments**

The 1971 amendment added the second and third provisos; and made minor changes in style.

**93-1206. (8888) Juries in justices' courts.**

#### **Cross-References**

Formation of criminal trial jury in justice or police court, sec. 95-2005.

Trial of criminal cases in justice and police courts, sec. 95-2004.

## **CHAPTER 13—JURORS—QUALIFICATIONS AND EXEMPTIONS**

Section 93-1301. Who competent to act as juror.

93-1304. Who exempt from jury duty.

**93-1301. (8890) Who competent to act as juror.** A person is competent to act as a juror if:

1. A citizen of the United States of the age of nineteen (19) years, who shall have been a resident of the state one (1) year, and of the county ninety (90) days before being selected and returned.

2 to 4. \* \* \* [Same as parent volume.]

**History:** Earlier statutes were Sec. 8, p. 506, Cod. Stat. 1871; amd. Sec. 1, p. 70, L. 1873; re-en. Sec. 780, 5th Div. Rev. Stat. 1879; amd. Sec. 1, p. 57, L. 1881; re-en. Sec. 1304, 5th Div. Comp. Stat. 1887; re-en. Sec. 230, C. Civ. Proc. 1895; re-en. Sec. 6337, Rev. C. 1907; re-en. Sec. 8890, R. C. M. 1921; amd. Sec. 6, Ch. 203, L. 1939; amd. Sec. 1, Ch. 116, L. 1965; amd. Sec. 20, Ch. 240, L. 1971. Cal. C. Civ. Proc. Sec. 198.

#### Amendments

The 1965 amendment deleted "and not more than seventy" after "age of twenty-one" in paragraph 1.

The 1971 amendment reduced the minimum age specified in subdivision 1 from 21 to 19 years; and made minor changes in style.

#### Repealing Clause

Section 2 of Ch. 116, Laws 1965 repealed all acts and parts of acts in conflict therewith.

93-1304. (8893) Who exempt from jury duty. A person is exempt from liability to act as juror if:

1. \* \* \* [Same as parent volume.]

2. A person holding a public office in the state, a county, township, or town;

3. to 6. \* \* \* [Same as parent volume.]

7. An officer, keeper or attendant of a hospital, asylum, or other charitable institution;

8. and 9. \* \* \* [Same as parent volume.]

10. An active member of the national guard of Montana, or an active member of a fire department of any city or town of this state. The number of firemen hereby exempted must not exceed twenty-eight (28), including officers for each company organized; and such members from each company must be selected from the roll of such company, according to the seniority of membership, and a list containing the names of such persons must be made out by the secretary of each company and filed with the clerk of the board of county commissioners on the first Mondays of December, March, June and September, and any failure to file the list hereby required is considered a waiver of such exemption.

11. and 12. \* \* \* [Same as parent volume.]

The court must discharge a person from serving as a trial juror, in either of the following cases:

Where it satisfactorily appears that he or she is not competent; and,

Where it satisfactorily appears that he or she is exempt and claims the benefit of exemption.

**History:** Ap. p. Sec. 9, p. 506, Cod. Stat. 1871; re-en. Sec. 781, 5th Div. Rev. Stat. 1879; amd. Sec. 1, p. 56, L. 1881; amd. Sec. 1, p. 101, L. 1883; re-en. Sec. 1305, 5th Div. Comp. Stat. 1887; amd. Sec. 232, C. Civ. Proc. 1895; re-en. Sec. 6339, Rev. C. 1907; amd. Sec. 1, Ch. 20, L. 1917; re-en. Sec. 8893, R. C. M. 1921; amd. Sec. 7, Ch. 203, L. 1939; amd. Sec. 1,

Ch. 425, L. 1971. Cal. C. Civ. Proc. Sec. 200.

#### Amendments

The 1971 amendment inserted "in the state" in subdivision 2; deleted "alms-house" in subdivision 7; and made minor changes in phraseology and style.

## CHAPTER 14—JURORS—SELECTION AND RETURN

Section 93-1404. Duty of clerk—jury boxes.

**93-1404. (8899) Duty of clerk—jury boxes.** The clerk shall prepare and keep a jury box and contents as follows: The number of each juror shall be written, typed or stamped on paper or other suitable material, identical in all respects, and placed in a box of ample size to permit said numbers to be thoroughly mixed, and which said box shall be kept for that purpose and shall be known as, and plainly marked, "jury box No. 1." The numbers may be used as often as necessary; provided, however, none shall be used which is in any manner whatsoever defaced or disfigured, or so marked that it may be recognized or distinguished from the others in said jury box No. 1 except by the number thereon. There shall be so enclosed in said box one number, and only one number, corresponding to the number before the name of each juror on the jury list.

**History:** En. Sec. 243, C. Civ. Proc. 1895; re-en. Sec. 6345, Rev. C. 1907; amd. Sec. 1, Ch. 35, L. 1919; re-en. Sec. 8899, R. C. M. 1921; amd. Sec. 2, Ch. 168, L. 1957; amd. Sec. 1, Ch. 110, L. 1969. Cal. C. Civ. Proc. Sec. 209.

**Amendment**

The 1969 amendment deleted "and en-

closed in separate black capsules" after "suitable material"; substituted references to "numbers" for references to "capsules" wherever appearing; and, in the last sentence, substituted "number before the name of each juror" for "corresponding to the name of each juror."

## DECISIONS UNDER FORMER LAW

**Color of Capsules**

Identical opaque capsules, though not black as formerly required by statute, were not such deviation as to constitute material departure from provisions of statute since the price of black capsules was approximately five times that of other avail-

able capsules, and hence an additional burden on taxpayer, and since no unfairness in selection of jurors would result from using another opaque colored capsule. In re Jury Box Capsules, 150 M 583, 447 P 2d 687.

## CHAPTER 15—JURORS—DRAWING AND SUMMONING FOR COURTS OF RECORD

Section 93-1503. Drawing—how conducted.

93-1512. Drawing additional jurors when original number insufficient—order designating number needed—selection from portion of county only—notification of jurors.

**93-1503. (8904) Drawing — how conducted.** 1. The clerk must place said box on a rod so that the same may readily revolve and said box must be revolved a sufficient number of times so as to ensure that the numbered slips in said box shall become thoroughly mixed, and thereafter the judge must draw from said box one (1) at a time, as many of the numbered slips as are ordered by the court.

2 and 3. \* \* \* [Same as parent volume.]

4. No person shall be asked to serve on more than one term during any year unless all the numbers in jury box No. 1 have been drawn and there are no other qualified jurors available.

**History:** En. Sec. 262, C. Civ. Proc. 1895; re-en. Sec. 6350, Rev. C. 1907; amd. Sec. 2, Ch. 35, L. 1919; re-en. Sec. 8904, R. C. M. 1921; amd. Sec. 1, Ch. 148, L.



1933; amd. Sec. 2, Ch. 151, L. 1937; amd. Sec. 2, Ch. 3, L. 1939; amd. Sec. 4, Ch. 168, L. 1957; amd. Sec. 2, Ch. 110, L. 1969. Cal. C. Civ. Proc. Sec. 219.

#### Amendments

The 1969 amendment, in subsection

(1), twice substituted "numbered slips" for "capsules," the latter referring to separate black capsules containing each juror's number; substituted "the" for "such" before the last reference to "numbered slips"; and added subsection (4).

### 93-1504 to 93-1506. (8905 to 8907) Repealed.

#### Repeal

Sections 93-1504 to 93-1506 (Secs. 263 to 265, C. Civ. Proc. 1895; Secs. 3 to 5, Ch. 35, L. 1919; Sec. 2, Ch. 148, L. 1933;

Secs. 5 to 7, Ch. 168, L. 1957), relating to the drawing of jurors from jury boxes Nos. 2 and 3, were repealed by Sec. 4, Ch. 110, Laws 1969.

### 93-1510, 93-1511. (8911, 8912) Repealed.

#### Repeal

Sections 93-1510 and 93-1511 (Secs. 281, 282, C. Civ. Proc. 1895; Secs. 8, 9,

Ch. 168, L. 1957), relating to the drawing and summoning of jurors, were repealed by Sec. 4, Ch. 110, Laws 1969.

**93-1512. Drawing additional jurors when original number insufficient—order designating number needed—selection from portion of county only—notification of jurors.** Whenever it appears to a district judge that additional jurors will be needed for any term or trial the judge shall draw as many numbers from jury box No. 1 as are necessary to secure the required number of additional jurors. Before drawing the numbers the judge shall by appropriate order designate the number of jurors needed, and, when the judge believes that securing the additional jurors from all of the county would cause unnecessary delay or expense then he may order the jurors selected from only a designated portion of the county, which portion shall never be less than the corporate limits of the county seat. If, in the selection of the additional jurors, a number is drawn and the jury list shows the person represented by the number to be a resident of an area outside the area designated by the court order then that number shall be returned to the jury box and a new number drawn. When the required number of names have been selected the judge may order the prospective jurors notified by telephone by the clerk of the court or he may order them summoned by the sheriff either by certified mail or by personal service.

**History:** En. Sec. 3, Ch. 110, L. 1969.

ing sections 93-1504, 93-1505, 93-1506, 93-1510 and 93-1511, R. C. M. 1947.

#### Title of Act

An act amending sections 93-1404 and 93-1503, R. C. M. 1947, to provide for a change in the method of drawing jurors and to eliminate the jury boxes numbered two and three and to provide for a change in the method of notifying jurors; repeal-

#### Repealing Clause

Section 4 of Ch. 110, Laws 1969 read "Sections 93-1504, 93-1505, 93-1506, 93-1510, and 93-1511, R. C. M. 1947, are repealed."

## CHAPTER 18—JURIES—HOW IMPANELED—ALTERNATES

### 93-1803. (8920) Manner of impaneling grand jury prescribed.

#### Compiler's Notes

Sections 94-6301 to 94-6319 referred to in this section, were repealed by Sec. 2,

Ch. 196, Laws of 1967. For new law, see sections 95-1401 to 95-1409.

## CHAPTER 19—COURT REPORTERS

Section 93-1906. Salary and expenses of reporter—apportionment.

**93-1903. (8930) Matters written out and filed.**

**Compiler's Notes**

Section 93-5505, referred to in this sec-

tion in the parent volume, was superseded by M. R. App. Civ. P., Rules 9, 10, and 25.

**93-1906. (8933) Salary and expenses of reporter — apportionment.** Every reporter appointed under the provisions of this chapter receives an annual salary of nine thousand two hundred dollars (\$9,200) and no other compensation except as provided in section 93-1904, provided, however, that all transcripts and bills of exceptions required by the county shall be furnished without cost, payable in monthly installments out of the general funds of the counties comprising the district for which he is appointed, according and in proportion to the number of civil and criminal actions entered and commenced in the district courts of such counties respectively in the preceding year; and it shall be the duty of the judge of such district, on the first day of January of each year, or as soon thereafter as may be, to apportion the amount of such salary to be paid by each county in his district on the basis aforesaid. The reporter is allowed, in addition to the salary and fees above provided, in judicial districts comprising more than one (1) county, his actual and necessary expenses of transportation and living when he goes on official business to a county of his judicial district other than the county in which he resides, from the time he leaves his place of residence until he returns thereto, said expenses to be apportioned and payable in the same way as the salary.

**History:** En. Sec. 375, C. Civ. Proc. 1895; re-en. Sec. 6378, Rev. C. 1907; amd. Sec. 1, Ch. 80, L. 1909; re-en. Sec. 8933, R. C. M. 1921; amd. Sec. 1, Ch. 36, L. 1927; amd. Sec. 1, Ch. 73, L. 1945; amd. Sec. 1, Ch. 49, L. 1951; amd. Sec. 1, Ch. 125, L. 1953; amd. Sec. 1, Ch. 76, L. 1955; amd. Sec. 6, Ch. 22, L. 1961; amd. Sec. 1, Ch. 114, L. 1965; amd. Sec. 1, Ch. 221, L. 1967; amd. Sec. 1, Ch. 192, L. 1969. Cal. C. Civ. Proc. Secs. 271 and 274.

**Amendments**

The 1965 amendment increased the salary set forth near the beginning of the section from \$6,600 to \$7,800.

The 1967 amendment increased the annual salaries of court reporters from \$7,800 to \$8,800.

The 1969 amendment increased annual salaries of court reporters from \$8,800 to \$9,200.

**CHAPTER 20—ATTORNEYS—QUALIFICATIONS—ADMISSION—LICENSE AND DISBARMENT**

Section 93-2001. Who may be admitted as attorneys.

**93-2001. (8936) Who may be admitted as attorneys.** Any citizen or person, resident of this state, who has bona fide declared his or her intention to become a citizen in the manner required by law, of good moral character, and who possesses the necessary qualifications of learning and ability, is entitled to admission as attorney and counselor in all the courts of this state. All persons are attorneys of the supreme court who are entitled to practice in the supreme court when this code takes effect.

**History:** Earlier acts relating to admission and powers of attorneys were Secs. 1-15, pp. 370-373, Bannack Stat.; re-en. Secs. 1-15, pp. 375-378, Cod. Stat. 1871; re-en. Secs. 40-54, 5th Div. Rev. Stat. 1879; re-en. Secs. 102-116, 5th Div. Comp. Stat. 1887.

This section en. Sec. 390, C. Civ. Proc. 1895; re-en. Sec. 6381, Rev. C. 1907; re-en.

Sec. 8936, R. C. M. 1921; amd. Sec. 11, Ch. 168, L. 1971. Cal. C. Civ. Proc. Sec. 275.

#### Amendments

The 1971 amendment deleted "of the age of twenty-one years" from the first sentence.

### 93-2002. (8937) Qualifications, examination and admission.

#### Constitutionality

Grant of diploma privilege to graduates of University of Montana law school while requiring graduates of other accredited schools to take bar examination did not constitute an unconstitutional denial of equal protection of laws. Goetz v. Harrison, 154 M 274, 462 P 2d 891.

#### Diploma Privilege

Familiarity of supreme court justices with University of Montana law school

and its faculty and students justifies continuation of practice of admitting graduates without examination. Goetz v. Harrison, 154 M 274, 462 P 2d 891.

#### Jurisdiction of District Court

District court had no jurisdiction of an action contesting the validity of this section and seeking restraining order against members of supreme court in their official capacity. Goetz v. Harrison, 153 M 403, 457 P 2d 911.

### 93-2026. (8961) Disbarment of attorneys—causes—jurisdiction.

#### Misappropriation

The conduct of an attorney in opening a checking account in the name of an estate of which he had been appointed executor and making withdrawals for his personal use constituted deceit and malpractice involving moral turpitude. In re O'Donnell, 143 M 51, 387 P 2d 303.

#### Moral Turpitude

Failure of attorney to make return of employees' withholding taxes was offense involving moral turpitude under this section so as to justify indefinite suspension from practice. In re Kline, — M —, 477 P 2d 881.

## CHAPTER 21—ATTORNEYS—DUTIES—LIABILITIES AND COMPENSATION

### 93-2102. (8975) Change of attorney.

#### Death of Client

Attorney was authorized to represent deceased client for whom there was filed a praecipe signed by counsel indicating withdrawal of previous counsel and re-

questing entry of name of new attorney for deceased even though signed and filed by counsel after death of client. State ex rel. Ross v. District Court, Fourth Judicial Dist., 150 M 233, 433 P 2d 778.

### 93-2106. (8979) Punishment for willful delay.

#### Actual Damages

Under this section, only actual damages may be trebled, not the statutory interest due. Daniels v. Paddock, 145 M 207, 399 P 2d 740.

#### Fiduciary Duty

Where attorney paid off client's mort-

gage with stipulation to receive client's inheritance when it came due, failure to give money to client under transaction, which was a breach of attorney's fiduciary duty, subjected attorney to treble damages. Daniels v. Paddock, 145 M 207, 399 P 2d 740.

### 93-2120. (8993) Lien for compensation.

#### Unemployment Compensation Cases

This section being in conflict with sections 87-142 and 87-143, relating to unemployment compensation claims, the latter sections, being more specific, should

control over this section, which is more general, especially where, in light of the services rendered, the attorney's fees could be considered "necessaries" under section 87-143. McAlear v. Unemploy-



ment Compensation Commission, 145 M 458, 405 P 2d 219.

#### **Waiver of Lien**

Failure of attorney to deduct expenses incurred in obtaining award in case and

his expressed intention that he would collect expenses from future settlements constituted waiver of his lien for expenses. Gross v. Holzworth, 151 M 179, 440 P 2d 765.

### **CHAPTER 25—LIMITATION OF ACTIONS FOR RECOVERY OF REAL PROPERTY**

#### **93-2504. (9015) Seizin within five years, etc.**

##### **Public Highway**

Public highway was established by prescription on evidence that members of public had used road openly for more than fifty years without ever having obtained permission from owners, that previous

owner had considered road a public highway, that road had been maintained by county for some 24 years and that public had never been denied use of road. Kostbade v. Metier, 150 M 139, 432 P 2d 382.

#### **93-2507. (9018) Possession—when presumed, etc.**

##### **Public Highway**

Where county adversely paved and maintained a highway over the land of a private party for a period of more than ten years, such county acquired an easement by prescription over the land even

though the private owner was assessed for and paid taxes on the property during the running of the statutory period. Brannon v. Lewis and Clark County, 143 M 200, 387 P 2d 706.

#### **93-2508. (9019) Occupation under written instrument or judgment, etc.**

##### **References**

Rhodes v. Weigand, 145 M 542, 402 P 2d 588.

#### **93-2509. (9020) What constitutes adverse possession, etc.**

##### **Possession under Color of Title**

Certificate of assignment given to person paying delinquent taxes on realty did not give that person color of title and

did not bring him within ambit of this section. Magelssen v. Atwell, 152 M 409, 451 P 2d 103.

#### **93-2511. (9022) What constitutes adverse possession, etc.**

##### **Conflicting Evidence**

Finding of district court that adverse possession was not established was affirmed, in light of record disclosing conflicting testimony on question of existence and upkeep of fences and conflicting testimony on question whether and who ran livestock on property during the prescriptive period. Johnson v. Silver Bow County, 151 M 283, 443 P 2d 6.

##### **Necessary Intent**

No adverse possession was established where plaintiff did not, by any of actions, show requisite intent to possess adversely, particularly in view of letter in which plaintiff admitted that defendants owned the disputed land. Magelssen v. Atwell, 152 M 409, 451 P 2d 103.

#### **93-2513. (9024) Occupancy and payment of taxes necessary, etc.**

##### **Burden of Proof**

The burden of proving all the essential elements of adverse possession is upon the party alleging it and he must prove that no taxes were levied or assessed against the land or that he has paid all taxes which were levied thereon. Town-

send v. Koukol, 148 M 1, 416 P 2d 532, 536.

##### **Easement**

Where the county maintained and paved a highway over the land of a private party for a period of more than ten years,

such county acquired an easement by prescription over the land and it was not necessary that the county pay taxes on the property during the statutory period. *Brannon v. Lewis and Clark County*, 143 M 200, 387 P 2d 706.

#### Essential Elements

To constitute adverse possession, the possession must be actual, feasible, exclusive, hostile and continuous for the

full period of years and the party asserting adverse possession must have paid all the taxes levied and assessed upon the property during the statutory period. *Townsend v. Koukol*, 148 M 1, 416 P 2d 532, 535, 536.

#### References

*Rhodes v. Weigand*, 145 M 542, 402 P 2d 588.

### CHAPTER 26—LIMITATION OF OTHER ACTIONS

- Section 93-2612. Actions relating to bond issues, time for bringing.  
 93-2619. Action for damages arising out of or resulting from construction of improvements to real property—ten years.  
 93-2620. Exception—injury occurring during tenth year.  
 93-2621. Responsibility of person in control not affected.  
 93-2622. Time of completion of improvements to real property.  
 93-2623. Other limitation periods not extended.  
 93-2624. Actions for medical malpractice.

#### 93-2603. (9029) Within eight years.

##### Nonparticipating Oil Royalty

Where wife agreed to property settlement granting her a percentage of royalties should oil ever be found on land, such right did not vest until oil production

began and her action for royalties was not barred by the fact that it had been more than eight years since execution of the settlement. *Close v. Ruegsegger's Estate*, 143 M 32, 386 P 2d 739.

#### 93-2604. (9030) Within five years.

##### Damage to Building from Broken Water Pipes

This section did not apply to action by owners of apartment building against realtors for water damages to building from bursting of water pipes due to alleged negligence of realtors in caring for the building. The claim was barred by statute of limitations relating to injury to or waste or trespass on property, section 93-2607. *Quitmeyer v. Theroux*, 144 M 302, 395 P 2d 965, 969, 970. (Dissenting opinion, 144 M 302, 395 P 2d 965, 971.)

##### Decedents' Estates

Five-year-limitation period under this section did not include time between decedent's death and issuance of letters of

administration to defendant. *Cartwright v. Joyce*, — M —, 473 P 2d 515.

##### Partial Bar by Statute

Fact that plaintiff had been awarded full judgment for services rendered without regard to limitation period under this section did not require that entire verdict be set aside but only that the judgment be reduced by value of services rendered prior to five year period, since the claim was divisible. *Cartwright v. Joyce*, — M —, 473 P 2d 515.

##### References

*Hager v. Tandy*, 146 M 531, 410 P 2d 447.

#### 93-2605. (9031) Within three years.

##### Amendment of Complaint

Three-year limitation for tort actions did not preclude amendment of complaint to correct misnomer by which defendant was referred to erroneously as Illinois corporation rather than as Delaware corporation; federal rule was applied in allowing the amendment. *Wentz v. Alberto Culver Co.*, 294 F Supp 1327.

##### Exhaustion of Administrative Remedies

Cause of action on statutory bond did

not accrue until required administrative proceedings were complete and board had made final determination of amount due. *Montana Milk Control Board v. Hartford Accident & Indemnity Co.*, 153 M 299, 456 P 2d 302.

##### Malpractice

Where sponge had been left in patient's body in operation performed ten years previously, patient's cause of action for malpractice did not accrue until patient

learned that such foreign object was in his body. *Johnson v. St. Patrick's Hospital*, 148 M 125, 417 P 2d 469, 473.

#### Product Liability

Where plaintiff developed cataracts following use of defendant's drug, there was question of fact as to whether publicity connecting the drug and cataracts was sufficient to put plaintiff on notice as to cause of his cataracts, thus to start the statute running, and motion for summary judgment for defendant, based on statute of limitations, was denied. *Hornung v. Richardson-Merrill, Inc.*, 317 F Supp 183.

### 93-2607. (9033) Two-year limitation.

#### Claim and Delivery

In an action for claim and delivery, where possession by the defendant is rightful, the statute of limitations begins to run when the defendant refuses upon demand to return the property. *Interstate Mfg. Co. v. Interstate Products Co.*, 146 M 449, 408 P 2d 478.

#### Damage by Fire

Two-year statute of limitations under this section barred suit brought by the United States under section 82-1237 for damage to property caused by alleged negligence of defendants in setting forest fire. *United States v. Eytcheson*, 237 F Supp 371.

#### Damage to Building from Broken Water Pipes

Claim of owners of an apartment building against realtors for water damage to building from bursting of water pipes due to alleged negligence of realtors in caring for the building was barred by this section. Statute of limitations concerning implied contracts, section 93-2604, was inapplicable. *Quitmeyer v. Theroux*, 144 M 302, 395 P 2d 965, 969, 970. (Dissenting opinion, 144 M 302, 395 P 2d 965, 971.)

#### Fraud and Mistake

An action by administrator of estate of deceased against surviving partners to recover assets which had been transferred by deceased during his last illness was timely filed on July 25, 1960 where fraud was not discovered until December 1, 1958. *Marshall v. Minschmidt*, 148 M 263, 419 P 2d 486, 491.

Action to rescind contract for sale of real estate was barred when not brought within two years after discovery of fraud by all parties concerned. *Rock v. Birdwell*, 149 M 449, 429 P 2d 634.

Quiet title action based on husband's fraud of wife's community property and

#### Wrongful Death

Parents' action for their own pecuniary losses from death of their child was for property damage and was barred by subdivision 2 of Sec. 93-2607 rather than being subject to subdivision 2 of this section. *Smith v. Wiprud*, 154 M 325, 463 P 2d 317.

#### References

*Rhodes v. Weigand*, 145 M 542, 402 P 2d 588.

instituted within two years of discovery of facts constituting fraud was timely even though brought as counterclaim. *Rozan v. Rosen*, 150 M 121, 431 P 2d 870.

Trial court properly granted defendant's motion for summary judgment in action for fraudulent representation, or in alternative breach of contract, in sale of tractor since plaintiff's having failed to state claim in complaint for breach of contract made tort statute applicable and tort action was barred by this section. *Israelson v. Mountain Tractor Co.*, — M —, 467 P 2d 149.

Where plaintiff developed cataracts following use of defendant's drug, evidence that wide publicity had been given to causal relationship between drug and cataracts did not establish that plaintiff was charged with knowledge of such relationship so as to constitute discovery under subsection 4 of this section. *Hornung v. Richardson-Merrill, Inc.*, 317 F Supp 183.

#### Injury to Personal Property

An action by an adoptive father and natural grandfather under section 93-2809 is an action for an injury to a pecuniary interest of the parent, therefore one for an injury to a property right which must be commenced within two years from the date the claim arose under subdivision 2 of this section. *LaTray v. Mannix Electric Co.*, 148 M 303, 419 P 2d 744, 745.

#### Negligent Misrepresentation

Action for negligent misrepresentation is action for fraud within meaning of statute and is subject to two-year statute of limitations which begins to run when plaintiff acquires knowledge of facts constituting negligent misrepresentation. *Falls Sand & Gravel Co. v. Western Concrete, Inc.*, 270 F Supp 495.

#### Nuisance

In action for alleged well pollution, trial court erred in not limiting recovery to



two years before filing date of complaint since, under circumstances, pollution of ground water by dumping of glue waste was continuing temporary nuisance and this section applied. *Nelson v. C & C Plywood Corp.*, 154 M 414, 465 P 2d 314.

#### Statutory Liability

The cause of action based on a railroad's statutory duty to maintain a cement drop, siphon and wooden flume on its right of way did not accrue on the taking of the right of way nor on the

abandonment of the right of way and notice to water rights owners that it would no longer maintain the works, but rather would accrue only after injury occurred from the railroad's failure to maintain the works. *Harrer v. Northern Pacific Ry. Co.*, 147 M 130, 410 P 2d 713.

#### References

*Rhodes v. Weigand*, 145 M 542, 402 P 2d 588; *Hager v. Tandy*, 146 M 531, 410 P 2d 447.

**93-2612. (9040) Actions relating to bond issues, time for bringing.** No action can be brought for the purpose of restraining the issuance and sale of bonds or other obligations by the state of Montana or any school district, county, city, town, or political subdivision of the state, or for the purpose of restraining the levy and collection of taxes for the payment of such bonds or other obligations, after the expiration of sixty (60) days from the date of the election on such bonds or obligations or, if no election was held thereon, after the expiration of sixty (60) days from the date of the order, resolution or ordinance authorizing the issuance thereof, on account of any defect, irregularity, or informality in giving notice of or not holding the election; nor shall any defense based upon any such defect, irregularity, or informality be interposed in any action unless brought within this period. This section applies but is not limited to any action and defense in which the issue is raised whether a voted debt or liability has carried by the required majority vote of the electors qualified and offering to vote thereon.

**History:** En. Sec. 1, Ch. 114, L. 1919; re-en. Sec. 9040, R. C. M. 1921; amd. Sec. 15, Ch. 158, L. 1971.

#### Amendments

The 1971 amendment completely re-wrote this section. For prior text, see parent volume.

**93-2613. (9041) Actions for relief not hereinbefore provided for.**

#### References

*Rhodes v. Weigand*, 145 M 542, 402 P 2d 588.

**93-2619. Action for damages arising out of or resulting from construction of improvements to real property—ten years.** Except as provided in sections 2 and 3 [93-2620 and 93-2621] of this act, no action to recover damages (other than an action upon any contract, obligation, or liability, founded upon an instrument in writing) resulting from or arising out of the design, planning, supervision, inspection, construction, or observation of construction of, or land surveying done in connection with, any improvement to real property shall be commenced more than ten (10) years after completion of such improvement.

**History:** En. Sec. 1, Ch. 60, L. 1971.

#### Title of Act

An act to provide a period of ten years within which an action for damages arising

out of certain services or work on improvements to real property must be commenced; and providing an effective date.

**93-2620. Exception—injury occurring during tenth year.** Notwithstanding the provisions of section 1 [93-2619] of this act, an action for such damages for an injury which occurred during the tenth year after such completion may be commenced within one (1) year after the occurrence of such injury.

**History:** En. Sec. 2, Ch. 60, L. 1971.

**93-2621. Responsibility of person in control not affected.** The limitation prescribed by this act shall not affect the responsibility of any owner, tenant, or person in actual possession and control of the improvement at the time a right of action arises.

**History:** En. Sec. 3, Ch. 60, L. 1971.

**93-2622. Time of completion of improvements to real property.** As used in this act, the term "completion" means that degree of completion at which the owner can utilize the improvement for the purpose for which it was intended or when a completion certificate is executed, whichever is earlier.

**History:** En. Sec. 4, Ch. 60, L. 1971.

**93-2623. Other limitation periods not extended.** Nothing in this act shall be construed as extending the period prescribed by the laws of this state for the bringing of any action.

**History:** En. Sec. 5, Ch. 60, L. 1971.

commencement of any action for which a right of action has heretofore accrued, this act shall be effective January 1, 1972."

**Effective Date**

Section 6 of Ch. 60, Laws 1971 read "In order to provide a reasonable period for

**93-2624. Actions for medical malpractice.** Action for injury or death against a physician or surgeon, dentist, registered nurse, dispensing optician, optometrist, licensed physical therapist, podiatrist, psychologist, osteopath, chiropractor, clinical laboratory bioanalyst, clinical laboratory technologist, pharmacist, veterinarian, or a licensed hospital as the employer of any such person, based upon such person's alleged professional negligence, or for rendering professional services without consent, or for error or omission in such person's practice, shall be commenced within three (3) years after the date of injury or three (3) years after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the injury whichever occurs last, but in no case may such action be commenced after five (5) years from the date of injury. However, this time limitation shall be tolled for any period during which such person has failed to disclose any act, error, or omission upon which such action is based and which is known to him, or through the use of reasonable diligence subsequent to said act, error or omission would have been known to him.

**History:** En. Sec. 1, Ch. 328, L. 1971.

tations in which actions for professional negligence can be commenced.

**Title of Act**

An act to prescribe the period of limi-

## CHAPTER 27—TIME OF COMMENCEMENT OF ACTIONS— GENERAL PROVISIONS CONCERNING

### 93-2703. (9049) Exception as to persons under disabilities.

#### Insanity Tolling Statute

Where plaintiff was insane for approximately five months following personal injuries, statute did not begin to run until he recovered his sanity and action was

timely filed when commenced within statutory period after that date. *State ex rel. Hi-Ball Contractors, Inc. v. District Court*, 154 M 99, 460 P 2d 751.

### 93-2708. (9054) Provision where judgment has been reversed.

#### Dismissal of Counterclaim

Quiet title action based on husband's fraud of wife's community property instituted as counterclaim and timely brought under statute of limitations but dismissed

on husband's motion may be properly instituted as principal action within one year after involuntary dismissal. *Rozan v. Rosen*, 150 M 121, 431 P 2d 870.

## CHAPTER 28—PARTIES TO CIVIL ACTIONS

### 93-2809. (9075) Parent or guardian may sue for injury, etc.

#### Limitation of Actions

An action by an adoptive father and natural grandfather under this section is an action for an injury to a pecuniary interest of the parent, therefore one for an injury to a property right which must be commenced within two years from the date the claim arose under section 93-2607(2). *LaTray v. Mannix Electric Co.*, 148 M 303, 419 P 2d 744, 745.

interest in wrongful death action where decedent left no surviving wife nor children and his father was dead. *Cowan v. Pacific Gamble Robinson Co.*, 232 F Supp 403, 405.

#### Statute of Limitations

Parents' action for their own pecuniary losses from death of child was for property damage and was governed by sec. 93-2607 rather than by sec. 93-2605. *Smith v. Wiprud*, 154 M 325, 463 P 2d 317.

#### Mother Bringing Action

Decedent's mother was real party in

### 93-2810. (9067) When representative may sue for death, etc.

#### References

*Stiles v. Gove*, 345 F 2d 991, 992.

### 93-2823. (9085) Tenants in common, etc., may sever in bringing, etc.

#### Assignor Bringing Action

Assignee of one-half interest of an overriding royalty agreement with plaintiff-assignor and defendant could not be joined as a party plaintiff in a suit to

compel defendant to pay the other half interest to plaintiff whether assignor was a trustee for the assignee or they were tenants in common. *Lowe & Lynn v. Flank Oil Co.*, 144 M 499, 398 P 2d 608.

### 93-2824. (9086) Action—when not to abate by death, marriage, etc.

#### Loss of Earnings

Where, in survivorship action under this section, jury returned verdict based only upon personal property belonging to decedent destroyed in accident, and awarded no damages for loss of earning capacity, district court did not abuse its discretion in granting new trial on damages only, since jury could not "disregard uncontradicted, credible nonopinion evidence" establishing decedent's earning capacity. *Putman v. Pollei*, 153 M 406, 457 P 2d 776.

#### Personal Injuries Action

Suit for personal injuries filed by decedent prior to his death survived in favor of administratrix of his estate. *Pickett v. Kyger*, 151 M 87, 439 P 2d 57.

#### Wrongful Death Action

Decedent's mother was real party in interest in wrongful death action where decedent left no surviving wife nor children and his father was dead. *Cowan v. Pacific Gamble Robinson Co.*, 232 F Supp 403, 405.



## CHAPTER 29—PLACE OF TRIAL OF CIVIL ACTIONS

Section 93-2908. Papers to be transmitted—costs and fees—jurisdiction.

**93-2901. (9093) Certain actions to be tried where the subject, etc.**

**References**

Beavers v. Rankin, 142 M 570, 385 P 2d 640; Tassie v. Continental Oil Co.,

228 F Supp 807, 808; Hidden Hollow Ranch v. Collins, 146 M 321, 406 P 2d 365.

**93-2902. (9094) Other actions—where the cause, etc.**

**References**

Hidden Hollow Ranch v. Collins, 146 M 321, 406 P 2d 365.

**93-2903. (9595) Place of trial of actions against counties.**

**Action by County against Nonresident**

This section does not require a change of venue where a county brings action against a nonresident in the district court

of that county. Carter County v. Cambrian Corp., 143 M 193, 387 P 2d 904.

**References**

Tassie v. Continental Oil Co., 228 F Supp 807, 808.

**93-2904. (9096) Other actions, according to the residence, etc.**

**Burden of Proof**

In contract action, once defendant showed that his place of residence was other than where suit was brought, the burden of proof was on the plaintiff to meet the motion for change of venue. Rapp v. Graham, 145 M 371, 401 P 2d 579.

**Change of Venue**

Although express terms of construction loan agreement between borrowers residing in Lewis and Clark County and lender in Cascade County did not designate place of performance of the contract, district court of Lewis and Clark County properly denied motion of lender for change of venue of action for breach of the contract, where borrowers' affidavit in opposition to the motion showed that the contract was to be performed in Lewis and Clark County, the loan agreement, note and mortgage being executed in Lewis and Clark County for home to be built in that county and inspection, supervision and completion of the home were to take place in Lewis and Clark County where all bills were to be paid. Brown v. First Federal Savings & Loan Assn. of Great Falls, 144 M 149, 394 P 2d 1017, 1019.

Denial of defendant's motion for change of venue to place where he resided was improper, since, where plaintiff-relator did not plead the commission agreement itself, nor include it as an exhibit, there was no way of considering the venue matter except on the residence of the defendant. Rapp v. Graham, 145 M 371, 401 P 2d 579.

The provisions of this section are permissive only and where five separate actions were brought in four widely separated counties against the same defendant involving the same accident, court did not abuse its discretion in granting change of venue under section 93-2906, subdivision 3, to the place where the tort occurred, for the convenience of the witnesses. Putro v. Mannix Electric, Inc., 147 M 314, 412 P 2d 410.

Under statute providing that on proper motion court must change place of trial when convenience of witnesses and ends of justice would be promoted and under further statute requiring action to be tried in county in which defendants reside at commencement of action, defendants were entitled to have action moved to county upon which all agreed, which was residence of one defendant, which was place insurance contract was entered into, which was where tort occurred and which was most convenient for defendants and their witnesses. Truck Ins. Exchange v. National Farmers Union Property & Cas. Co., 149 M 357, 427 P 2d 50.

**Construction**

Statutory provisions creating exceptions to the general rule recognizing a defendant's privilege to be sued in his own county will not be given a strained or doubtful construction. Rapp v. Graham, 145 M 371, 401 P 2d 579.

**Performance of Contract**

In an action for breach of an oral agreement to lease farm land, venue was in

the county where the estate of one of the defendants was being probated, in which the other defendants resided, in which the land was located, and in which service was made and the creditor's claim filed. *Erickson v. Toy*, 142 M 121, 385 P 2d 268.

If contract is to be performed in a county other than the county of defendant's residence, then the plaintiff has his choice of the two counties in which to sue. He may sue in the county where defendant resides or in the county where the contract is to be performed. The provisions of this section are permissive. *Brown v. First Federal Savings & Loan Assn. of Great Falls*, 144 M 149, 394 P 2d 1017, 1019.

In order for plaintiff to maintain action on contract in a county where defendant does not reside, the place of performance must be evident either by express terms of contract, or by necessary implication that a county other than that of defendant's residence is intended to be the county of performance. *Brown v. First Federal Savings & Loan Assn. of Great Falls*, 144 M 149, 394 P 2d 1017, 1019.

To maintain suit in county other than that of defendant's residence, plaintiff must show clearly the facts relied on to bring the case within one of the exceptions to the rule. The contract must state clearly that it is to be performed in county other than that of defendant's residence so that no other fair construction can be placed upon it. *Rapp v. Graham*, 145 M 371, 401 P 2d 579.

In bringing suit where contract is to be performed, rather than place of defendant's residence, a mere direction by the seller as to the place of payment is not sufficient to maintain venue within exception to this section, nor can a promise to remit to cover the purchase price be sued upon by the seller in the county of the point to which the remittance is to be made. *Rapp v. Graham*, 145 M 371, 401 P 2d 579.

In suit against seller for breach of express warranty against diseased cattle, buyer properly exercised option in initiating suit in county where cattle were delivered as county where contract was to be performed. *Neely v. Steinbach*, 149 M 119, 423 P 2d 584.

Contract clause expressly requiring defendant to perform by making payments

in county other than defendant's county of residence came within performance exception in statute thereby entitling plaintiff to institute action on contract in county in which payments were to be made. *McGregor v. Svare*, 151 M 520, 445 P 2d 571.

In action on account for grazing rentals on lands owned or controlled by plaintiff, trial court erred in granting motion for change of venue where action was predicated upon contract to be performed in county where action was brought. *Cormier Bros., Inc. v. Willcutt*, 154 M 297, 462 P 2d 889.

### Tort Actions

Attorney's advice to a client that a personal injury action had to be filed in the county where the cause arose was not improper or unethical. *Petition of Wasson*, 143 M 323, 389 P 2d 406.

Although either the county of residence of defendant or county where tort was committed was proper county in which to bring action for personal injury arising from accident, where none of the defendants were residents of Montana, the action was triable in any county designated by plaintiff in his complaint. *Tassie v. Continental Oil Co.*, 228 F Supp 807, 809.

Defendant is not entitled to a change of venue in personal injury action where plaintiff filed the action in the proper county. *Tassie v. Continental Oil Co.*, 228 F Supp 807, 809.

Where personal injury action arising from accident occurring in Fallon County, Montana, was commenced in Silver Bow County, Montana, by nonresident plaintiff, and nonresident defendants in removing action to federal district court designated Billings Division, but stated no statutory grounds for change of venue and did not show good cause for assignment to Billings Division, plaintiff was entitled to change of venue to Butte Division in which Silver Bow County was located. *Tassie v. Continental Oil Co.*, 228 F Supp 807, 810.

### References

*Hidden Hollow Ranch v. Collins*, 146 M 321, 406 P 2d 365; *Yeager v. Foster*, 146 M 330, 406 P 2d 370.

## 93-2906. (9098) Place of trial may be changed in certain cases.

### Change of Venue

Under statute providing that on proper motion the court must change place of trial when convenience of witnesses and ends of justice would be promoted and

under further statute requiring action to be tried in county in which defendants reside at commencement of action, defendants were entitled to have action moved to county upon which all agreed,

which was residence of one defendant, which was place insurance contract was entered into, which was where tort occurred and which was most convenient for defendants and their witnesses. *Truck Ins. Exchange v. National Farmers Union Property & Cas. Co.*, 149 M 357, 427 P 2d 50.

#### Convenience of Witnesses

Where affidavit showed that five separate actions had been brought against defendant in four widely separated counties involving the same occurrence, trial court properly granted change of venue for the convenience of the witnesses to the county where accident occurred although affidavit omitted names of witnesses and nature of their testimony. *Putro v. Mannix Electric, Inc.*, 147 M 314, 412 P 2d 410.

#### County Taxpayers as Jurors

Where county brought an action for damages done to bridge struck by defendant's truck, it was not an abuse of discretion for the district court to deny a motion for a change of venue even though the jury was made up, necessarily, of taxpayers of that county, each of whom had a pecuniary interest of \$31. *Carter County v. Cambrian Corp.*, 143 M 193, 387 P 2d 904.

**93-2908. (9100) Papers to be transmitted—costs and fees—jurisdiction.** When an order is made transferring an action or proceeding for trial, the clerk of the court, or justice of the peace, must transmit the pleading and papers therein to the clerk or justice of the court to which it is transferred. The costs and fees thereof, and of filing the papers anew, must be paid by the party at whose instance the order was made, except that: (1) when the action is an action upon a contract, express or implied, for the direct payment of money, and no claim contained in the complaint exceeds one thousand dollars (\$1,000); (2) the county designated in the complaint is not the proper county; and (3) if the plaintiff will not within ten (10) days after request stipulate for change of venue and defendant files a motion for such change and such motion is thereafter granted; then the party filing the complaint must pay all costs and fees of filing the papers anew and all costs and fees, including reasonable attorney's fees to be fixed by the court incurred by the defendant by reason of the change of venue motion and hearing. The court to which an action or proceeding is transferred has and exercises over the same the like jurisdiction as if it had been originally commenced therein.

**History:** En. Sec. 64, p. 53, L. 1877; re-en. Sec. 64, 1st Div. Rev. Stat. 1879; re-en. Sec. 64, 1st Div. Comp. Stat. 1887; re-en. Sec. 617, C. Civ. Proc. 1895; re-en. Sec. 6508, Rev. C. 1907; re-en. Sec. 9100, R. C. M. 1921; amd. Sec. 1, Ch. 176, L. 1971. Cal. C. Civ. Proc. Sec. 390

#### Multiple Causes of Action

Where the defendant is entitled to a change of venue on one cause of action in a complaint containing more than one cause of action, the motion for change must be granted even though the other cause or causes would be triable where the plaintiff commenced the action. *Beavers v. Rankin*, 142 M 570, 385 P 2d 640.

#### Time for Motion

Court's discretion in granting change of venue under subdivision 3 of this section cannot be exercised until after a defendant has answered, so that where action was brought under section 93-2904 in county where co-defendant lived, denial of first motion before defendant had answered applied only to the residency requirement of the co-defendant and did not bar determination of second motion made under this section after defendant had answered. *Putro v. Mannix Electric, Inc.*, 147 M 314, 412 P 2d 410.

#### References

*Tassie v. Continental Oil Co.*, 228 F Supp 807, 810; *State ex rel. Peery v. District Court*, 145 M 287, 400 P 2d 648; *Yeager v. Foster*, 146 M 330, 406 P 2d 370.

#### Amendments

The 1971 amendment added to the second sentence the language requiring payment of costs and fees by the party filing the complaint in the instances described in the numbered clauses.



CHAPTER 30—MANNER OF COMMENCING CIVIL ACTIONS—  
SERVICE OF SUMMONS

## 93-3002. (9106) Superseded—Supreme Court Order 10750.

**Supersession**

This section (Sec. 23, p. 47, Bannack Stat.; Sec. 23, p. 139, L. 1867; Sec. 67, p. 54, L. 1877), relating to endorsement

of the complaint and issue of summons, is superseded by M. R. Civ. P., Rule 41(e) as amended by Sup. Ct. Ord. 10750.

## 93-3008. (9112) Superseded—Supreme Court Order 10750.

**Supersession**

This section (Sec. 1, Ch. 37, L. 1917; Sec. 1, Ch. 135, L. 1949; Sec. 1, Ch. 122, L. 1951), relating to service of process

on corporations through the secretary of state, is superseded by M. R. Civ. P., Rule 4 D, as amended by Sup. Ct. Ord. 10750.

## 93-3011, 93-3012. (9115, 9116) Superseded—Supreme Court Order 10750.

**Supersession**

These sections (Secs. 4, 5, Ch. 37, L. 1917), relating to service of process on corporations through the secretary of

state, are superseded by M. R. Civ. P., Rule 4 D, as amended by Sup. Ct. Ord. 10750.

## 93-3020. (9124) Return of summons.

**References**

Sewell v. Beatrice Foods Co., 145 M 337, 400 P 2d 892.

## CHAPTER 37—VERIFICATION OF PLEADINGS

## 93-3702. (9163) Verification of pleadings.

**References**

Rambur v. Diehl Lumber Co., 144 M 84, 394 P 2d 745, 747.

## CHAPTER 42—INJUNCTION

## 93-4203. (9242) Injuncton—when not allowed.

**Discretionary Appointment**

Taxpayer was not entitled to an injunction in action questioning the qualifications of supervisor appointed by board of railway commissioners in the proper exercise of their discretion. Steel v. Board of Railroad Commrs., 144 M 432, 397 P 2d 101.

classification officer's real property evaluations to determine tax assessment rolls. State ex rel. Keast v. Krieg, 145 M 521, 402 P 2d 405, 19 ALR 3d 396.

District court acted beyond its jurisdiction by issuing injunction to prevent board of equalization from revising grading and valuation of nonirrigated farm land pursuant to section 84-429.7 et seq. State ex rel. Lord v. District Court, 154 M 269, 463 P 2d 323.

**Enforcement of Public Statute**

County commissioners and assessor cannot be enjoined from relying on re-

## 93-4204. (9343) Injunction order—when granted.

**Real Estate Cases**

An order enjoining landowner from proceeding with mobile home subdivision on his land until zoning regulations were adopted was improper because it was

impossible to predict whether landowner's plans would conflict with zoning regulations finally adopted. State ex rel. Corning v. District Court of 18th Judicial District, — M —, 474 P 2d 701.

**93-4205. (9244) Injunction order, etc.****Injunction Granted after Hearing**

Portion of statute pertaining to affidavits does not apply to injunction issued on basis of hearing on order to show cause.

State ex rel. Martin v. District Court, Twelfth Judicial Dist., 151 M 41, 438 P 2d 563.

**93-4206. (9245) When notice required.****References**

State ex rel. Keast v. Krieg, 145 M 521, 402 P 2d 405.

**CHAPTER 43—ATTACHMENT****Section 93-4304. Undertaking.**

93-4331.1. Release of attachment by clerk where no proceedings taken in main action.

**93-4304. (9259) Undertaking.** Before issuing the writ, the clerk must require a written undertaking on the part of the plaintiff, with two (2) or more sufficient sureties, to be approved by the clerk, in a sum not less than double the amount claimed by the plaintiff, if such amount be one thousand dollars (\$1,000) or under, or, in case the amount so claimed by plaintiff shall exceed one thousand dollars (\$1,000), then in a sum equal to such amount, but in no case shall an undertaking be required exceeding in amount the sum of twenty thousand dollars (\$20,000). The condition of such undertaking shall be to the effect that if the defendant recovered judgment, or if the court shall finally decide that the plaintiff was not entitled to an attachment, the plaintiff will pay all costs that may be awarded to the defendant, and all damages he may sustain by reason of the issuing out of the attachment, not exceeding the sum specified in the undertaking. At any time within thirty (30) days after the service of summons, the defendant may except to the sufficiency of the sureties. If he fails to do so, he is deemed to have waived all objections to them. When excepted to, the plaintiff's sureties, upon notice to the defendant of not less than two (2) days nor more than ten (10) days, must justify before a judge of the district court, or before the clerk thereof, and upon failure to justify, or if others in their place fail to justify, at the time and place appointed, the clerk or judge shall issue an order vacating the writ of attachment.

**History:** Ap. p. Sec. 93, p. 61, Bannack Stat.; amd. Sec. 122, p. 156, L. 1867; amd. Sec. 12, p. 65, L. 1869; amd. Sec. 7, p. 75, L. 1870; amd. Sec. 138, p. 54, Cod. Stat. 1871; amd. Sec. 20, p. 56, L. 1874; amd. Sec. 180, p. 82, L. 1877; re-en. Sec. 180, 1st Div. Rev. Stat. 1879; amd. Sec. 6, p. 9, L. 1881; re-en. Sec. 182, 1st Div. Comp. Stat. 1887; en. Sec. 892, C. Civ. Proc. 1895; re-en. Sec. 6659, Rev. C.

1907; re-en. Sec. 9259, R. C. M. 1921; amd. Sec. 1, Ch. 15, L. 1951; amd. Sec. 1, Ch. 303, L. 1967. Cal. C. Civ. Proc. Sec. 539.

**Amendments**

The 1967 amendment increased the maximum amount of an undertaking from \$10,000 to \$20,000.

**93-4314. (9267) Garnishment—when garnishee liable to plaintiff.****References**

Great Falls Transfer & Storage Co. v.

Pan American Petroleum Corp., 353 F 2d 348.

**93-4331.1. Release of attachment by clerk where no proceedings taken in main action.** If a writ of attachment has been levied on real property as provided in section 93-4307, R. C. M. 1947, and no proceedings have been taken in the action in which the attachment was issued for a period of five years, the clerk of court shall upon application of the defendant or the record owner of such real property issue a release of the attachment and a copy of such release shall be filed with the county clerk where the writ of attachment and notice thereof is filed and the county clerk shall file and index such release as any other releases of attachment.

**History:** En. Sec. 1, Ch. 97, L. 1965.

**Title of Act**

An act providing that a lien of attach-

ment on real property may be released by the clerk of court where no action has been taken to foreclose such lien for a period of five years.

**93-4335. (9288) Different attachments—when liens accrue.**

**Conflicting Attachments**

Since, for purposes of garnishment, a debt has no fixed situs but may be reached in any jurisdiction where the person found owing it can be located, Wyoming court was bound to give full faith and credit to Montana court in de-

termining which garnishor had prior claim where writs of attachment had been issued by different parties on the same garnishee in both states. *Great Falls Transfer & Storage Co. v. Pan American Petroleum Corp.*, 353 F 2d 348.

**93-4342. (9295) Repealed.**

**Repeal**

This section (Sec. 9295, R. C. M. 1921), relating to attachment of stocks of foreign

corporations, was repealed by Sec. 143, Ch. 300, Laws 1967.

## CHAPTER 44—RECEIVERS

**Section 93-4401. Appointment of receiver.**

**93-4401. (9301) Appointment of receiver.** A receiver may be appointed by the court in which an action is pending, or by the judge thereof:

1. to 4. \* \* \* [Same as parent volume.]

5. In all other cases where receivers have heretofore been appointed by the usages of courts of equity.

**History:** Ap. p. Sec. 116, p. 67, *Bannack Stat.*; re-en. Sec. 143, p. 160, L. 1867; re-en. Sec. 179, p. 62, *Cod. Stat.* 1871; en. Sec. 221, p. 93, L. 1877; re-en. Sec. 221, 1st Div. Rev. Stat. 1879; re-en. Sec. 229, 1st Div. Comp. Stat. 1887; re-en. Sec. 950, C. Civ. Proc. 1895; re-en. Sec. 6698, Rev. C. 1907; re-en. Sec. 9301, R. C. M. 1921; amd. Sec. 142, Ch. 300, L. 1967. *Cal. C. Civ. Proc. Sec. 564.*

loans made by farming corporation, but it appeared that stockholders were, in good faith, planning to meet their obligation and the corporation was solvent, appointment of receiver at instance of bank merely to protect the price of the stock was erroneous. *State ex rel. Larry C. Iverson, Inc. v. District Court*, 146 M 362, 406 P 2d 828.

**Amendments**

The 1967 amendment deleted subdivision 5 and redesignated former subdivision 6 as subdivision 5.

**Debt as Basis for Appointment**

Where bank held stock as security on

**Extraordinary Remedy**

Appointment of a receiver being a "drastic" remedy, which deprives the lawful owner of property the right to manage and control his own interests, the power to appoint a receiver should be exercised sparingly only upon a strong showing, and not as of course. If the desired out-



come may be achieved in any other way, then this course should be followed. State ex rel. Larry C. Iverson, Inc. v. District Court, 146 M 362, 406 P 2d 828.

**References**

Thisted v. Tower Management Corp., 147 M 1, 409 P 2d 813.

**93-4406. (9306) Powers of receivers.**

**References**

Thisted v. Tower Management Corp., 147 M 1, 409 P 2d 813.

**CHAPTER 49—ISSUES—MODE OF TRIAL AND POSTPONEMENT—  
PROCEDURE TO PROCURE JURY TRIAL**

**93-4910. (9332) Motion to postpone a trial, etc.**

**Criminal Cases**

Court did not commit prejudicial error when it overruled criminal defendant's objection to county attorney's motion for continuance even though motion was not

supported by required affidavit where motion was made just prior to end of trial court's day and trial resumed promptly on next morning. State v. Crockett, 148 M 402, 421 P 2d 722.

**CHAPTER 50—TRIAL BY JURY—FORMATION OF JURY—CHALLENGES**

Section 93-5010. Challenge.

**93-5008. (9341) Ballots—when drawn from box No. 3.**

**Compiler's Notes**

Section 93-1506 referred to in the first

sentence, was repealed by Sec. 4, Ch. 110, Laws of 1969.

**93-5010. (9343) Challenge.** Each party may challenge the jury or jurors as follows:

1. to 3. \* \* \* [Same as parent volume.]

There can be only one challenge on a side to the array or panel, which may be made by one or more of the parties. A challenge to the array or panel may be made and the whole array or panel set aside by the court, when the jury was not selected, drawn, summoned or notified as prescribed by law. Challenges to individual jurors are for cause or peremptory. Each party is entitled to four peremptory challenges, except as provided for under section 93-1205. If no peremptory challenges are taken until the panel is full, they must be taken by the parties alternately, commencing with the plaintiff.

**History:** Ap. p. Sec. 133, p. 69, Ban-nack Stat.; re-en. Sec. 161, p. 164, L. 1867; amd. Sec. 197, p. 66, Cod. Stat. 1871; amd. Sec. 248, p. 100, L. 1877; amd. Sec. 248, 1st Div. Rev. Stat. 1879; re-en. Sec. 257, 1st Div. Comp. Stat. 1887; re-en. Sec. 1059, C. Civ. Proc. 1895; re-en. Sec. 6740, Rev. C. 1907; re-en. Sec. 9343, R. C. M.

1921; amd. Sec. 1, Ch. 300, L. 1971. Cal. C. Civ. Proc. Sec. 301.

**Amendments**

The 1971 amendment added the excep-tion to the fourth sentence of the second paragraph; and made a minor change in punctuation.

**93-5011. (9344) Challenges for cause.**

**Taxpayers of Plaintiff County**

Where county brought an action for damages to bridge, it was not an abuse of discretion for the district court to deny a motion for a change of venue even though

the jury was necessarily made up of tax-payers of that county each of whom had a pecuniary interest averaging \$31. Carter County v. Cambrian Corp., 143 M 193, 387 P 2d 904.

## CHAPTER 51—TRIAL—CONDUCT OF THE TRIAL

**93-5101. (9349) Order of trial.****References**

Boehler v. Sanders, 146 M 158, 404 P 2d 885.

**93-5102. (9350) View by jury of the premises.****Discretion of Trial Court**

A viewing is within the discretion of the trial court, even where there has been a change in the condition of the scene of the accident or the thing which contributed to the accident. Clark v. Worrall, 146 M 374, 406 P 2d 822.

cause of the accident, it was not an abuse of discretion to allow the jury to view the premises on which the accident occurred after the alterations had been made. Clark v. Worrall, 146 M 374, 406 P 2d 822.

**References**

Wolfe v. Northern Pacific R. Co., 147 M 29, 409 P 2d 528.

**Time of Viewing**

Where alterations to defendant's bowling alley had little relationship to the

**93-5104. (9352) Jury may take with them certain papers.****Subsequent Request by Jury**

Trial court did not err in permitting state's exhibits, consisting of photographs of scene of accident, to be taken to jury

room when asked for by jury about one hour after it began deliberation. State v. Medicine Bull, 152 M 34, 445 P 2d 916.

**93-5105. (9353) Deliberation of jury—how conducted.****Misconduct of Jury**

When the jury retires to the jury room it should be concerned only with the evidence and the law; the verdict, thus, is a result of a fair expression of opinion by all the jurors. Schmoyer v. Bourdeau, 148 M 340, 420 P 2d 316, 317.

Trial court did not err in denying plaintiff's motion for a new trial, on the ground of misconduct of jury during its

deliberations, supported by affidavits of four jurors indicating that the irregularity was not on a material matter in dispute, where plaintiff was probably not prejudiced by juror's misconduct in improperly referring to prior litigation in which plaintiff had been involved, the poll of the jury showing an eight to four verdict for the plaintiff. Schmoyer v. Bourdeau, 148 M 340, 420 P 2d 316, 317.

**93-5106. (9354) May come into court for further instructions.****Construction**

Although this section provides that the jury may request that they be brought into court, this is not mandatory and the

jury may send an inquiry out to the court. State ex rel. State Highway Commission v. Wheeler, 148 M 246, 419 P 2d 492, 498.

**93-5110. (9358) Verdict—how declared—form of—polling the jury.****Poll of Jury**

Court abused discretion in granting new trial based solely on ground that it had erred in refusing to grant request for poll of jury; error, if any, was harmless in light of evidence affirmatively showing that verdict was rendered in open court in presence of all counsel, that, in response

to question by judge, foreman of jury advised him they had agreed upon verdict and that, following reading of verdict, judge inquired if it was true verdict of at least eight of them and jury answered in affirmative. Martello v. Darlow, 151 M 232, 441 P 2d 175.

CHAPTER 52—THE VERDICT—GENERAL AND SPECIAL—  
DIRECTED WHEN

## 93-5205. (9364) Directed verdict—when.

**Evidence Supporting Directed Verdict**

Denial of motion for directed verdict by lessor of destroyed building being sued by lessee claiming that premises were repairable was cause for reversal where, viewing evidence most favorable to plaintiff lessee and considering as proven everything which evidence tended to prove, reasonable man could come to no other conclusion but that building was destroyed. *Solich v. Hale*, 150 M 358, 435 P 2d 883.

In negligence suit, defendant was entitled to directed verdict where there was total absence of any evidence tending to establish proximate causal connection between breach of duty and plaintiff's injuries and damages. *Pickett v. Kyger*, 151 M 87, 439 P 2d 57.

**Inferences from Evidence**

In passing on a motion for a directed verdict the court will consider the evidence in the light most favorable to the party against whom the motion is directed and will draw every reasonable inference from such evidence. *Parini v. Lanch*, 148 M 188, 418 P 2d 861, 863.

**Insufficient Evidence**

A directed verdict may be granted when the evidence is so insufficient in fact as to be insufficient in law. *Parini v. Lanch*, 148 M 188, 418 P 2d 861, 863.

**Motion by Both Parties**

Owner of building destroyed by gas explosion was entitled to directed verdict against general contractor who was clearly liable on evidence, but not against gas company who should have been granted its motion for directed verdict on record unequivocally demonstrating that gas company took every reasonable precaution to protect customers as required by law. *Bridges v. Moritz*, 149 M 273, 425 P 2d 721.

**Negligence**

Directed verdict on liability of defendant for injuries sustained by plaintiff, when defendant's car struck mare which was being led by rope attached to saddle on gelding upon which plaintiff was riding, was proper where negligence of defendant was shown by evidence that defendant had been drinking; that he was driving the car at 30-35 mph while passengers were hunting gophers beside the road; that defendant was not aware of the mare which he struck until the collision was inevitable; and that he failed to stop after realizing that he had struck horse in violation of section 32-1202. *Parini v. Lanch*, 148 M 188, 418 P 2d 861, 864.

**Questions of Fact**

A jury question is presented only when reasonable men might differ as to the conclusions of fact to be drawn from the evidence, viewed in the light most favorable to the party against whom the motion is made. *Parini v. Lanch*, 148 M 188, 418 P 2d 861, 863.

**Review of Order Directing Verdict**

In reviewing an order directing a verdict for the defendant, the supreme court would consider only the evidence of the plaintiff, excluding a bare scintilla but including every fair inference which might be drawn from the facts proved, as well as any evidence introduced by defendant which tended to support the plaintiff's case, and if the evidence viewed in the most favorable light tended to establish the case made by plaintiff's pleadings, the order would be reversed. *McIntosh v. Linder-Kind Lumber Co.*, 144 M 1, 393 P 2d 782.

**References**

*Holland v. Konda*, 142 M 536, 385 P 2d 272; *Tolson v. Tolson*, 145 M 87, 399 P 2d 754.

## CHAPTER 53—TRIAL BY THE COURT

## 93-5302. (9366) Superseded—Supreme Court Order 10750-9.

**Supersession**

Section 93-5302 (Sec. 1111, C. Civ. Proc. 1895), requiring decision on findings upon question of fact to be in writing and filed

within twenty days after submission, was superseded by M. R. Civ. P., Rule 52(a), as amended by Sup. Ct. Ord. 10750-9.

## 93-5305 to 93-5307. (9369 to 9371) Superseded—Supreme Court Order 10750-9.



**Supersession**

Sections 93-5305 to 93-5307 (Secs. 1114 to 1116, C. Civ. Proc. 1895), relating to exceptions for defective findings and to

effect of want of findings, were superseded by M. R. Civ. P., Rule 52(b), as amended by Sup. Ct. Ord. 10750-9.

## CHAPTER 55—EXCEPTIONS—SETTLEMENT AND ALLOWANCE OF BILL

## 93-5501. (9386) Superseded—M. R. App. Civ. P.

**Supersession**

This section (Ap. p. Sec. 164, p. 75, Bannack Stat.), defining an exception and providing the time when the exception

must be taken, is listed as superseded in Table A of M. R. App. Civ. P. See M. R. Civ. P., Rule 46.

## 93-5503. (9388) Superseded—M. R. App. Civ. P.

**Supersession**

This section (Ap. p. Sec. 166, p. 76, Bannack Stat.; Sec. 1, Ch. 92, L. 1905; Sec. 2, Ch. 225, L. 1921), relating to ex-

ceptions and objections, is listed as superseded in Table A of M. R. App. Civ. P. See M. R. Civ. P., Rule 46.

## 93-5504 to 93-5509. (9389 to 9394) Superseded—M. R. App. Civ. P., Rules 9, 10 and 25.

**Supersession**

These sections (Secs. 1154 to 1158, C. Civ. Proc. 1895; Sec. 1, Ch. 35, L. 1907; Secs. 3, 4, Ch. 225, L. 1921; Sec. 1, Ch.

19, L. 1941; Sec. 1, Ch. 85, L. 1955), relating to the settlement and allowance of bill of exceptions, are superseded by M. R. App. Civ. P., Rules 9, 10 and 25.

CHAPTER 56—NEW TRIALS—GROUNDS AND MOTIONS FOR—  
RECORD ON APPEAL FROM FINAL JUDGMENT

## 93-5601. (9395) New trial defined.

**Parties Restored to Original Position**

The granting of a motion for a new trial restores the parties to the positions they occupied before the trial and the action is commenced anew with the par-

ties limited to their original pleadings but unbound by previous evidence and testimony except as held by existing rules of evidence. *Waite v. Waite*, 143 M 248, 389 P 2d 181.

## 93-5602. (9396) New trial in equity cases.

**Irregularity in Proceedings**

In an action for specific performance where plaintiff who had no knowledge of law or procedure acted as his own counsel and, though he received some assistance from the trial judge, many errors in

the proceedings were shown in the record, it was within the discretion of the judge to grant defendant's motion for a new trial. *Waite v. Waite*, 143 M 248, 389 P 2d 181.

## 93-5603. (9397) When a new trial may be granted.

**Abuse of Discretion**

Aggrieved party has burden of proving that district court manifestly abused its discretion by granting new trial; prima facie case of manifest abuse of discretion may be made by discrediting grounds specified for granting new trial or showing that existing error did not materially affect substantial rights of moving party. *Tigh v. College Park Realty Co.*, 149 M 358, 427 P 2d 57.

Where jury's verdict was based on conflicting and probably false testimony, refusal of new trial by trial court was sufficient abuse of discretion to require supreme court to reverse lower court and order new trial. *Morris v. Corcoran Pulpwood Co.*, 154 M 468, 465 P 2d 827.

**Appellate Review**

In condemnation proceeding, where state appraised land at \$18,000, con-

demnee appraised it at \$95,000 and jury awarded condemnnee \$21,000, granting of new trial because award was inadequate was not such an abuse of trial judge's discretion as to warrant reversal in spite of fact that there was no rebuttal of state's only expert witness. *State Highway Commission v. Greenfield*, 145 M 164, 399 P 2d 989.

### Inadequate Damages

The trial court had no power in a condemnation case to condition its denial of a new trial on acceptance by the highway commission of a higher award. *State Highway Commission v. Schmidt*, 143 M 505, 391 P 2d 692.

Court abused its discretion in granting new trial upon grounds of insufficiency of evidence to justify verdict in that "verdict awarded by the jury to the plaintiff is wholly inadequate" where there was conflict in evidence and where it was question for jury whether injuries suffered by passenger were caused by grossly negligent operation of car or whether passenger assumed risk of going into car driven by man who had several drinks. *Heen v. Tiddy*, 151 M 265, 442 P 2d 434.

Granting of new trial on ground that award of \$4,000 was inadequate damages for death of high school sophomore whose funeral expenses were \$1,605 was an abuse of discretion under the circumstances, including fact that plaintiff father received no earnings from son and gave no indication of need. *Davis v. Smith*, 152 M 170, 448 P 2d 133.

### Instructions to Jury

Long form quotient verdict instruction from Jury Instruction Guide is not "a resort to the determination of chance" within meaning of statute in absence of showing that jurors agreed in advance that quotient thus obtained should constitute amount of verdict and adhered to that agreement. *Thomas v. Whiteside*, 148 M 394, 421 P 2d 449.

Where trial court erred in its instruction on assumption of risk in pedestrian injury case, trial court did not abuse its discretion by granting new trial pursuant to this section. *Jankovich v. Neill*, 153 M 337, 457 P 2d 475.

### Jury Misconduct

In a condemnation proceeding, affidavits from jurors showing that a newspaper cartoon having to do with condemnation cases in general had been viewed by some members of the jury during the trial could not be used to support the motion for a new trial in the absence of a showing that the verdict was reached in a manner other than by a fair

expression of opinion by the jurors. *State Highway Commission v. Manry*, 143 M 382, 390 P 2d 97, distinguished in *Goff v. Kinzle*, 148 M 61, 417 P 2d 105, and in *Rasmussen v. Sibert*, 153 M 286, 456 P 2d 835.

New trial was properly granted where foreman of jury made his own investigation at the scene of the accident after hearing testimony and informed the other members of jury, during their deliberation, of the results of his investigation. The foreman was guilty of misconduct upon which verdict could be impeached by affidavits of jurors. *Goff v. Kinzle*, 148 M 61, 417 P 2d 105, distinguished in *Rasmussen v. Sibert*, 153 M 286, 456 P 2d 835.

Trial court did not err in denying plaintiff's motion for a new trial, on the ground of misconduct of the jury during its deliberations, supported by affidavits of four jurors indicating that the irregularity was not on a material matter in dispute, where plaintiff was probably not prejudiced by juror's misconduct in improperly referring to prior litigation in which plaintiff had been involved, the poll of the jury showing an eight to four verdict for the plaintiff. *Schmoyer v. Bourdeau*, 148 M 340, 420 P 2d 316, 317.

Trial court's granting of new trial on grounds of jury misconduct was reversible error where such motion was made under subd. 1 of this section and supported by jury affidavits, since use of jury affidavits under this section is confined to motions made under subd. 2. *Rasmussen v. Sibert*, 153 M 286, 456 P 2d 835.

### Polling Jury

Court abused discretion in granting new trial based solely on ground that it had erred in refusing request for poll of jury; error, if any, was harmless in light of evidence affirmatively showing that verdict was rendered in open court in presence of all counsel, that in response to question by judge, foreman of jury advised him they had agreed upon verdict and that following reading of verdict, signed by foreman, judge inquired of jury if it was true verdict of at least eight of them and jury answered in affirmative. *Martello v. Darlow*, 151 M 232, 441 P 2d 175.

### Substantial Evidence

Although new trial for insufficiency of evidence is discretionary with trial court and will not be disturbed except for abuse, the discretion is exhausted when court finds substantial evidence to support verdict; evidence from which it could be found that drive-in restaurant owner had no reasonable cause to anticipate "spur of the moment" unprovoked assault upon patron supported verdict for owner in

action for injuries, so that granting of new trial was abuse of discretion. *Kincheloe v. Rygg*, 152 M 187, 448 P 2d 140.

#### References

*Waite v. Waite*, 143 M 248, 389 P 2d 181.

### 93-5606. (9400) Superseded—Supreme Court Order 10750-9.

#### Supersession

Section 93-5606 (Sec. 172, p. 77, Bannack Stat.; Sec. 3, Ch. 41, L. 1907; Sec. 8, Ch. 225, L. 1921), relating to hearing on new

trial motion, was superseded by M. R. Civ. P., Rule 59(d), as amended by Sup. Ct. Ord. 10750-9.

### 93-5607, 93-5608. (9401, 9402) Superseded—M. R. App. Civ. P., Rules 7, 9, 10 and 25.

#### Supersession

These sections (Ap. p. Sec. 289, p. 115, L. 1877; Ap. p. Secs. 1175, 1176, C. Civ. Proc. 1895; Sec. 4, Ch. 41, L. 1907; Sec. 9, Ch. 225, L. 1921), relating to a stay

of proceedings on notice of motion for a new trial and contents of record on appeal, are superseded by M. R. App. Civ. P., Rules 7, 9, 10 and 25.

## CHAPTER 57—JUDGMENT—MANNER OF GIVING AND ENTRY— JUDGMENT ROLL AND DOCKET—LIEN OF

Section 93-5708. Judgment lien—when it begins and when it expires.

93-5710.1. Judgment or decree recorded before 1965 as notice of contents—certified copies as evidence.

93-5710.2. Judgment or decree recorded before 1967 as notice of contents—certified copies as evidence.

93-5710.3. Validation of defective judgments or decrees affecting realty—1969 act.

93-5710.4. Validation of defective judgments or decrees affecting realty—1971 act.

### 93-5702. (9404) Superseded—M. R. App. Civ. P., Rule 29.

#### Supersession

This section (Sec. 174, p. 77, Bannack Stat.), providing for bringing of a case before the court for argument where the

case has been reserved for argument, is superseded by M. R. App. Civ. P., Rule 29.

### 93-5707. (9409) Superseded—M. R. App. Civ. P., Rules 9, 10 and 25.

#### Supersession

This section (Ap. p. Sec. 203, p. 174, L. 1867; Sec. 1, Ch. 36, L. 1921; Sec. 1, Ch. 146, L. 1925), relating to the contents

and filing of judgment roll, is superseded by M. R. App. Civ. P., Rules 9, 10 and 25.

93-5708. (9410) Judgment lien—when it begins and when it expires. Immediately after the entry of the judgment in the judgment book, the clerk must make the proper entries of the judgment, under appropriate heads, in the docket kept by him; and from the time the judgment is docketed it becomes a lien upon all real property of the judgment debtor not exempt from execution in the county, owned by him at the time, or which he may afterward acquire, until the lien ceases. The lien continues for six years, unless the judgment be previously satisfied.

History: Ap. p. Sec. 180, p. 78, Bannack Stat.; en. Sec. 204, p. 174, L. 1867; re-en. Sec. 244, p. 77, Cod. Stat. 1871; amd. Sec. 1, p. 40, L. 1876; re-en. Sec. 295, p. 116, L. 1877; re-en. Sec. 295, 1st Div. Rev. Stat. 1879; re-en. Sec. 307,

1st Div. Comp. Stat. 1887; re-en. Sec. 1197, C. Civ. Proc. 1895; re-en. Sec. 6807, Rev. C. 1907; re-en. Sec. 9410, R. C. M. 1921; amd. Sup. Ct. Ord. 11020, eff. January 1, 1966. Cal. C. Civ. Proc. Sec. 671.



**Advisory Committee's Note**

Subdivision (b) of Rule 41, M. R. App. Civ. P., eliminates the reference in section 93-5708 to judgment rolls, which are nowhere provided for in Montana Rules of Appellate Civil Procedure.

**Amendments**

The 1965 amendment substituted "the entry of the judgment in the judgment book" for "after filing the judgment roll" near the beginning of the section.

**93-5710.1. Judgment or decree recorded before 1965 as notice of contents—certified copies as evidence.** Any judgment or decree of any court of this state affecting real property, provided that no action is now pending to set aside any such judgment or decree, which was, previous to the date this act takes effect, copied into the proper book, kept in the office of the clerk of the district court, and certified copy of which judgment or decree was, previous to the date this act takes effect, recorded in the proper book, kept in the office of the county clerk and recorder, shall be deemed to impart, after that date, notice of its contents to subsequent purchasers and encumbrancers, notwithstanding any defect, omission, informality or irregularity in any of the court proceedings in the action in which such judgment or decree was entered and obtained, if time for appeal in the case has expired, and such judgment or decree shall not be deemed invalidated by reason of any such defect, omission, informality or irregularity; but nothing herein shall be deemed to affect the rights of purchasers or encumbrancers previous to that date. Duly certified copies of such judgment or decree, or of the record thereof, may be read in evidence, with like effect as copies of a judgment or decree duly and regularly obtained and recorded and entered.

**History:** En. Sec. 1, Ch. 124, L. 1965.

**Title of Act**

An act to validate records of court proceedings containing defects, omissions, informalities or irregularities in obtaining a judgment or decree affecting real property, in which time for appeal has expired; providing that duly certified copies of such judgment or decree may

be read in evidence with the same effect as judgments or decrees duly and regularly obtained, recorded and entered; and providing for a repealing clause.

**Repealing Clause**

Section 2 of Ch. 124, Laws 1965 repealed all acts and parts of acts in conflict therewith.

**93-5710.2. Judgment or decree recorded before 1967 as notice of contents—certified copies as evidence.** Any judgment or decree of any court of this state affecting real property, provided that no action is now pending to set aside any such judgment or decree, which was, prior to January 1, 1967, copied into the proper book, kept in the office of the clerk of the district court, and certified copy of which judgment or decree was, previous to the date this act takes effect, recorded in the proper book, kept in the office of the county clerk and recorder, shall be deemed to impart, after that date, notice of its contents to subsequent purchasers and encumbrancers, notwithstanding any defect, omission, informality or irregularity in any of the court proceedings in the action in which such judgment or decree was entered and obtained, if time for appeal in the case has expired, and such judgment or decree shall not be deemed invalidated by reason of any such defect, omission, informality or irregularity; but nothing herein shall be deemed to affect the rights of purchasers or encumbrancers previous to that date. Duly certified copies of such judgment or decree, or of

the record thereof, may be read in evidence, with like effect as copies of a judgment or decree duly and regularly obtained and recorded and entered.

**History:** En. Sec. 1, Ch. 184, L. 1967.

**Title of Act**

An act to validate records of court proceedings prior to January 1, 1967, containing defects, omissions, informalities or irregularities in obtaining a judgment

or decree affecting real property, in which time for appeal has expired; providing that duly certified copies of such judgment or decree may be read in evidence with the same effect as judgments or decrees duly and regularly obtained, recorded and entered.

**93-5710.3. Validation of defective judgments or decrees affecting realty—1969 act.** Any judgment or decree of any court of this state affecting real property, provided that no action is now pending to set aside any such judgment or decree, which was, prior to January 1, 1969, copied into the proper book, kept in the office of the clerk of the district court, and certified copy of which judgment or decree was, previous to the date this act takes effect, recorded in the proper book, kept in the office of the county clerk and recorder, shall be deemed to impart, after that date, notice of its contents to subsequent purchasers and encumbrancers, notwithstanding any defect, omission, informality or irregularity in any of the court proceedings in the action in which such judgment or decree was entered and obtained, if time for appeal in the case has expired, and such judgment or decree shall not be deemed invalidated by reason of any such defect, omission, informality or irregularity; but nothing herein shall be deemed to affect the rights of purchasers or encumbrancers previous to that date. Duly certified copies of such judgment or decree, or of the record thereof, may be read in evidence, with like effect as copies of a judgment or decree duly and regularly obtained and recorded and entered.

**History:** En. Sec. 1, Ch. 73, L. 1969.

**Compiler's Notes**

This act became effective July 1, 1969.

**Title of Act**

An act to validate records of court proceedings prior to January 1, 1969, containing defects, omissions, informalities or ir-

regularities in obtaining a judgment or decree affecting real property, in which time for appeal has expired; providing that duly certified copies of such judgment or decree may be read in evidence with the same effect as judgments or decrees duly and regularly obtained, recorded and entered.

**93-5710.4. Validation of defective judgments or decrees affecting realty—1971 act.** Any judgment or decree of any court of this state affecting real property, provided that no action is now pending to set aside any such judgment or decree, which was, prior to January 1, 1971, copied into the proper book, kept in the office of the clerk of the district court, and certified copy of which judgment or decree was, previous to the date this act takes effect, recorded in the proper book, kept in the office of the county clerk and recorder, shall be deemed to impart, after that date, notice of its contents to subsequent purchasers and encumbrancers, notwithstanding any defect, omission, informality or irregularity in any of the court proceedings in the action in which such judgment or decree was entered and obtained, if time for appeal in the case has expired, and such judgment or decree shall not be deemed

invalidated by reason of any such defect, omission, informality or irregularity; but nothing herein shall be deemed to affect the rights of purchasers or encumbrancers previous to that date. Duly certified copies of such judgment or decree, or of the record thereof, may be read in evidence, with like effect as copies of a judgment or decree duly and regularly obtained and recorded and entered.

**History:** En. Sec. 1, Ch. 94, L. 1971.

**Title of Act.**

An act to validate records of court proceedings prior to January 1, 1971, containing defects, omissions, informalities or irregularities in obtaining a judgment or

decree affecting real property, in which time for appeal has expired; providing that duly certified copies of such judgment or decree may be read in evidence with the same effect as judgments or decrees duly and regularly obtained, recorded and entered.

## CHAPTER 58—THE EXECUTION

Section 93-5813.1. Waiver of exemptions prohibited in unsecured note.  
93-5846. Validation of judicial sales before 1971.

**93-5813.1. Waiver of exemptions prohibited in unsecured note.** Any waiver of statutory exemption from execution in an unsecured promissory note shall be unenforceable.

**History:** En. Sec. 1, Ch. 172, L. 1965.

**Title of Act**

An act to prohibit waiver of statutory exemptions.

**93-5824. (9432) Notice of sale—how given—copy of notice.**

**Sale of Real Property**

District court ordering the restraining of a sale of real property on execution can determine if additional notice is required after the injunction is lifted if

the initial notice requirements of this section have been met. *Williams v. Superior Homes, Inc.*, 148 M 38, 417 P 2d 92, 95.

**93-5841. (9449) Possession of lands prior to foreclosure, etc.**

**Vendee of Mortgagee**

Purchasers who took premises subject to pre-existing mortgage, and who had not assumed payment of mortgage, even though occupying premises as their home at time of foreclosure, were not "execu-

tion debtors" within meaning of statute and were not entitled to possession of premises during one-year period of redemption. *First Nat. Bank of Circle v. Hastetter*, 149 M 142, 423 P 2d 306.

**93-5846. Validation of judicial sales before 1971.** All judicial sales of real property prior to January 1, 1971, provided no action is now pending to set such sale aside, where made in this state on proceedings to satisfy valid judgments or decrees of any court and the moneys bidden thereon paid to the officer making such sale, shall be valid and sufficient in law to sustain a sheriff's deed based on such sale, and when no such deed has been executed, shall entitle such purchaser to such deed; and such deed, if now or when executed, shall be sufficient to convey all the title of judgment debtor at the time of such sale in the premises so sold to the purchaser at said sale, and all defects or irregularities in the issuance of execution, or the manner of making or conducting the



sale, or in the recitals or references in such deed, shall be disregarded and such sale shall not be invalidated by reason of any such defect or irregularity.

History: En. Sec. 1, Ch. 97, L. 1971.

#### Compiler's Notes

Except for the date in the second line of text, the above section is identical with Sec. 1, Ch. 57, Laws of 1965, Sec. 1, Ch. 180, Laws of 1967 and Sec. 1, Ch. 76, Laws of 1969, previously compiled at this section. The compiler has therefore substituted the above section for the 1969 section.

#### Title of Act

An act relating to validation of judicial sales prior to January 1, 1971, of real property and curing defects or irregularities in the issuance of execution, manner of making or conducting the sale, or in the recitals or references in sheriffs' deeds.

### CHAPTER 60—FORECLOSURE OF MORTGAGES—ACTIONS FOR— SALES UNDER POWERS

#### 93-6001. (9467) Proceedings in foreclosure suits.

##### Deficiency Judgment

The purpose of this section is to require the mortgagee to bring one foreclosure action to enforce "any right" protected by the mortgage. If the price bid in at foreclosure is insufficient to reimburse the mortgagee, a deficiency judgment may be entered against the mortgagor for the balance due and may be enforced by a lien upon the real property of the mortgagor only. *Stallings v. Erwin*, 148 M 227, 419 P 2d 480, 482.

##### Tax Lien

Where, subsequent to purchase of tax

certificates, mortgagee foreclosed the mortgage, the foreclosure sale cut off any lien asserted by mortgagee for taxes paid although the mortgage permitted mortgagee to pay taxes and collect the same upon foreclosure. *Stallings v. Erwin*, 148 M 227, 419 P 2d 480, 483.

A mortgagee who pays taxes on the mortgaged property prior to foreclosure does not acquire a distinct and separate lien on the property which survives the foreclosure sale. *Stallings v. Erwin*, 148 M 227, 419 P 2d 480, 483.

### CHAPTER 61—NUISANCE, WASTE AND TRESPASS ON REAL PROPERTY—ACTIONS FOR

#### 93-6101. (9474) Nuisance defined and actions for.

##### Baseball Park

"Pee wee" baseball league conducted on empty lot in residential district was not nuisance under statute, notwithstanding evidence that: field was brightly illuminated, crowds were noisy, traffic was heavy, field was dusty, some children used foul language, balls were hit into neighboring yards damaging lawns and flowers

and games were played after 10 p.m.; nuisance, if any, was private and arose out of particular manner of operation of legitimate enterprise lower court should merely have entered decree calculated to eliminate injurious features. *Kasala v. Kalispell Pee Wee Baseball League*, 151 M 109, 439 P 2d 65, 32 ALR 3d 1120.

### CHAPTER 62—QUIETING TITLE TO PROPERTY, REAL AND PERSONAL AND OTHER ACTIONS CONCERNING REAL ESTATE

#### 93-6212. (9488.1) Provisions to apply if no known claimants, etc.

##### Compiler's Notes

Sections 93-6206 to 93-6208, contained in the reference to sections 93-6203 to 93-

6211 in this section in the parent volume, were repealed by Sec. 2, Ch. 189, Laws 1963.

93-6216. (9492) **An order may be made to allow a party to survey, etc.**

**References**

State ex rel. State Highway Commis-

sion v. District Court, 147 M 348, 412 P 2d 832.

93-6218. (9494) **Petition for order—procedure.**

**References**

State ex rel. State Highway Commis-

sion v. District Court, 147 M 348, 412 P 2d 832.

## CHAPTER 63—PARTITION OF REAL ESTATE—ACTIONS FOR

93-6311. (9526) **Title of parties may be tried.**

**Compiler's Notes**

Sections 93-3101 to 93-3103, 93-3201 to 93-3203, 93-3301 to 93-3306, 93-3401, 93-3402, 93-3404, 93-3405, 93-3408, 93-3410 to 93-3412, 93-3415, 93-3501 to 93-3506, 93-3601 to 93-3604, 93-3701, 93-3801 to 93-3803, 93-

3806 to 93-3808, 93-3811 to 93-3813, 93-3815 to 93-3820, 93-3901 to 93-3905, 93-3907, and 93-3909, contained in the reference to sections 93-3101 to 93-3910 in this section in the parent volume, were repealed by Sec. 84, Ch. 13, Laws 1961.

## CHAPTER 64—QUO WARRANTO

93-6405. (9580) **When private person may commence action.**

**Unqualified Appointee**

Taxpayer was not entitled to an injunction in action questioning the qualifications of supervisor appointed by board

of railway commissioners in proper exercise of their discretion, *Steel v. Board of Railroad Commrs.*, 144 M 432, 397 P 2d 101.

## CHAPTER 67—JUSTICES' COURTS—MANNER OF COMMENCING ACTIONS IN

Section 93-6711. **Service of summons.**

93-6711. (9636) **Service of summons.** The summons may be served by a sheriff or constable of any of the counties of this state; provided, that when a summons issued by a justice of the peace is to be served out of the county in which it was issued, the summons shall have attached to it a certificate under seal by the county clerk of the county in which it was issued, to the effect that the person issuing the same was an acting justice of the peace at the date of the summons; or the summons may be served by any male person resident in the state, over the age of eighteen (18) years, not a party to the suit, and must be served and returned as provided in Montana Rules of Civil Procedure, Rule 4D (2), (3), (4), (8), and (9); or it may be served by publication, provided in Montana Rules of Civil Procedure, Rule 4D (5) and (8), so far as they relate to publication of summons, are made applicable to justices' courts; the word "justice" being substituted for the word "clerk" whenever the latter word occurs.

**History:** En. Sec. 1510, C. Civ. Proc. 1895; amd. Sec. 1, Ch. 61, L. 1903; re-en. Sec. 7003, Rev. C. 1907; re-en. Sec. 9636, R. C. M. 1921; amd. Sec. 1, Ch. 110, L. 1967. Cal. C. Civ. Proc. Sec. 850.

**Amendments**

The 1967 amendment substituted "Montana Rules of Civil Procedure, Rule 4D

(2), (3), (4), (8), and (9)" for "sections 93-3006 and 93-3007" after "as provided in"; and substituted "provided in Montana Rules of Civil Procedure, Rule 4D (5) and (8)" for "and sections 93-3013, 93-3014 and 93-3015" after "by publication."

## CHAPTER 68—JUSTICES' COURTS—PLEADINGS IN

- Section 93-6802.1. Permissible pleadings enumerated.  
 93-6802.2. Demurrers and pleas abolished.

## 93-6802. (9639) Pleadings in justices' courts.

**Compiler's Notes**

This section appears to have been superseded by secs. 93-6802.1 and 93-6802.2.

93-6802.1. Permissible pleadings enumerated. In justice court there shall be a complaint and answer; and there shall be a reply to a counter-claim denominated as such; and an answer to a cross-claim; a third-party complaint, if a person who is not an original party is brought into the action; and there shall be a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.

**History:** En. Sec. 1, Ch. 168, L. 1967.

**Title of Act**

An act designating the pleadings to be allowed in justice court and designating the form thereof.

93-6802.2. Demurrers and pleas abolished. Demurrers, pleas and exceptions for insufficiency of a pleading shall not be used.

**History:** En. Sec. 2, Ch. 168, L. 1967.

**Repealing Clause**

Section 3 of Ch. 168, Laws 1967 repealed all acts and parts of acts in conflict therewith.

## CHAPTER 77—JUSTICES' COURTS—GENERAL PROVISIONS

## Section 93-7712. Depositions—how taken.

93-7712. (9722) Depositions—how taken. Depositions to be used in justices' courts shall be taken as provided in Rules 26 and 28 to 32, inclusive of the Montana Rules of Civil Procedure.

**History:** En. Sec. 1691, C. Civ. Proc. 1895; re-en. Sec. 7089, Rev. C. 1907; re-en. Sec. 9722, R. C. M. 1921; amd. Sec. 1, Ch. 167, L. 1967.

"shall" for "may" after "justices' courts"; and substituted "Rules 26 and 28 to 32, inclusive of the Montana Rules of Civil Procedure" for "sections 93-1801-1 to 93-1801-6."

**Amendments**

The 1967 amendment substituted

CHAPTER 79—JUSTICES' COURTS—APPEALS FROM,  
TO DISTRICT COURTS

## 93-7907. (9760) Procedure on appeal, etc.

**Dismissal of Appeal**

Where defendant filed notice of appeal of adverse verdict in justice court with an undertaking on May 8, 1969 but took no further action, district court properly

granted plaintiff's motion to dismiss for unnecessary delay on July 1, 1970, since it was appellant's burden as moving party to bring appeal on for hearing. Eide Ins. v. Correll, — M —, 478 P 2d 272.



## CHAPTER 80—SUPREME COURT—APPEALS TO

- Section 93-8001. How judgments and orders may be reviewed.  
 93-8002. Party aggrieved may appeal—names of parties.  
 93-8013. Deposit in lieu of undertaking.

**93-8001. (9729) How judgments and orders may be reviewed.** A judgment or order in a civil action, except when expressly made final by this code, may be reviewed as prescribed in sections 93-7901 to 93-7908, and by the Rules of Appellate Civil Procedure, and not otherwise.

**History:** En. Sec. 248, p. 94, Bannack Stat.; re-en. Sec. 317, p. 199, L. 1867; re-en. Sec. 366, p. 107, Cod. Stat. 1871; re-en. Sec. 405, p. 149, L. 1877; re-en. Sec. 405, 1st Div. Rev. Stat. 1879; re-en. Sec. 418, 1st Div. Comp. Stat. 1887; re-en. Sec. 1720, C. Civ. Proc. 1895; re-en. Sec. 7096, Rev. C. 1907; re-en. Sec. 9729, R. C. M. 1921; amd. Sup. Ct. Ord. 11020, eff. January 1, 1966. Cal. C. Civ. Proc. Sec. 936.

#### Advisory Committee's Note

Subdivisions (c), (d), (e) of Rule 41,

M. R. App. Civ. P. amend this section, and sections 93-8002 and 93-8013 which contain references to appeals from justices' courts to district courts, so as to preserve the existing procedure applicable to such appeals.

#### Amendments

The 1965 amendment substituted "by the Rules of Appellate Civil Procedure" for "93-8001 to 93-8023" after "93-7908 and" and made a minor change in punctuation.

**93-8002. (9730) Party aggrieved may appeal—names of parties.** A party aggrieved may appeal in the cases prescribed in sections 93-7901 to 93-7908 and the Rules of Appellate Civil Procedure.

**History:** En. Sec. 248, p. 94, Bannack Stat.; amd. Sec. 319, p. 199, L. 1867; re-en. Sec. 368, p. 107, Cod. Stat. 1871; re-en. Sec. 407, p. 150, L. 1877; re-en. Sec. 407, 1st Div. Rev. Stat. 1879; re-en. Sec. 420, 1st Div. Comp. Stat. 1887; re-en. Sec. 1721, C. Civ. Proc. 1895; re-en. Sec. 7097, Rev. C. 1907; re-en. Sec. 9730, R. C. M. 1921; amd. Sup. Ct. Ord. 11020, eff. January 1, 1966. Cal. C. Civ. Proc. Sec. 938.

#### Amendments

The 1965 amendment substituted "the Rules of Appellate Civil Procedure" for "93-8001 to 93-8023" at the end of the present section and omitted a former second sentence which read: "The party appealing is known as the appellant, and the adverse party as the respondent."

**93-8003 to 93-8006. (9731 to 9734) Superseded — M. R. App. Civ. P., Rules 1 and 4 to 6.**

#### Supersession

These sections (Ap. p. Secs. 251, 252, 262, pp. 95, 97, Bannack Stat.; Secs. 320, 331, pp. 199, 201, L. 1867; Secs. 408 to 410, 431, pp. 150, 151, 157, L. 1877; Sec. 1, pp. 146, 147, L. 1899; Secs. 10, 11, Ch. 225, L. 1921; Sec. 1, Ch. 39, L. 1925;

Sec. 1, Ch. 41, L. 1941), relating to appealable judgments and orders, the taking of an appeal and the time therefor, and the undertaking or deposit on appeal, are superseded by M. R. App. Civ. P., Rules 1 and 4 to 6.

**93-8011, 93-8012. (9739, 9740) Superseded—M. R. App. Civ. P., Rules 6 and 7.**

#### Supersession

These sections (Ap. p. Secs. 268, 269, p. 99; Sec. 337, p. 202, L. 1867; Sec. 415, p. 152, L. 1877), relating to stay of pro-

ceedings and undertaking on appeal, are superseded by M. R. App. Civ. P., Rules 6 and 7.

**93-8013. (9741) Deposit in lieu of undertaking.** In all cases where an undertaking is required on appeal by the provisions of sections 93-7901 to 93-7908, a deposit in the court below of the amount of the judgment

appealed from, and three hundred dollars in addition, shall be equivalent to filing the undertaking; and in all such cases the undertaking or deposit may be waived by the written consent of the respondent.

History: En. Sec. 388, p. 112, Cod. Stat. 1871; re-en. Sec. 417, p. 153, L. 1877; re-en. Sec. 417, 1st Div. Rev. Stat. 1879; re-en. Sec. 430, 1st Div. Comp. Stat. 1887; amd. Sec. 1732, C. Civ. Proc. 1895; re-en. Sec. 7108, Rev. C. 1907; re-en. Sec. 9741, R. C. M. 1921; amd. Sup. Ct. Ord. 11020, eff. January 1, 1966. Cal. C. Civ. Proc. Sec. 948.

#### Amendments

The 1965 amendment rewrote this section. For previous text, see parent volume.

### 93-8014 to 93-8025. (9742 to 9753) Superseded—M. R. App. Civ. P.

#### Supersession

These sections (Secs. 260, 271, 273, pp. 96, 99, 100, Bannack Stat.; Sec. 342, p. 204, L. 1867; Secs. 418, 426 to 428, pp. 153, 156, L. 1877; Secs. 1733 to 1735, 1737, 1739 to 1744, C. Civ. Proc. 1895; Sec. 2, Ch. 35, L. 1907; Sec. 3, Ch. 42, L. 1907; Sec. 1, Ch. 47, L. 1909; Secs. 12 to

14, Ch. 225, L. 1921; Sec. 1, Ch. 19, L. 1925; Sec. 1, Ch. 87, L. 1929), relating to appeals from district courts, are superseded by the Rules of Appellate Civil Procedure. For designation of superseding rule see M. R. App. Civ. P., Table B.

## CHAPTER 86—COSTS AND DISBURSEMENTS—COST BILL— SUIT IN FORMA PAUPERIS

Section 93-8601.1. Contractual right to attorney fees to be reciprocal.  
93-8625. Poor person may sue or defend without costs.

**93-8601.1. Contractual right to attorney fees to be reciprocal.** Whenever by virtue of the provisions of any contract or obligation in the nature of a contract, made and entered into at any time after the effective date of this act, one party to such contract or obligation has an express right to recover attorney fees from any other party to the contract or obligation in the event the party having that right shall bring an action upon the contract or obligation, then in any action on such contract or obligation all parties to the contract or obligation shall be deemed to have the same right to recover attorney fees, and the prevailing party in any such action, whether by virtue of the express contractual right, or by virtue of this act, shall be entitled to recover his reasonable attorney fees from the losing party or parties.

History: En. Sec. 1, Ch. 259, L. 1971.

#### Title of Act

An act to extend a contractual right to attorney fees granted to one party to a

contract to the prevailing party in any lawsuit on such contract whether or not the contract expressly provides for such fees as to such prevailing party.

### 93-8602. (9787) When allowed, of course, to the plaintiff.

#### Attorney's Fees

On foreclosure of mortgage, federal tax lien took priority over attorney's fees allowed under section 93-8613 since attorney's lien failed to meet "choate" test at

the time the amount of federal taxes owed on the property was fixed. First Nat. Bank of Lewistown v. Tilzey, 238 F Supp 750.

### 93-8605. (9790) When the several defendants are not united, etc.

#### References

State ex rel. Gage v. District Court, 148 M 284, 419 P 2d 746, 748.

**93-8606. (9791) Costs of appeal discretionary with the court, etc.****References**

Stalcup v. Montana Trailer Sales & Equipment Co., 146 M 494, 409 P 2d 542.

**93-8613. (9798) Counsel fees on foreclosure.****Intervenor**

Where party intervened in action to foreclose mortgage in an effort to have title quieted in his behalf as against both mortgagee and mortgagor, it was error to award intervenor judgment for attorney's fees under this section since intervenor qualified as neither mortgagee bringing foreclosure action nor as possible successful mortgagor defending such action.

Nikles v. Barnes, 153 M 113, 454 P 2d 608.

**Priority of Claim**

On foreclosure of mortgage, federal tax lien took priority over attorney's fees allowed under this section since attorney's lien failed to meet "choate" test at the time the amount of federal taxes owed on the property was fixed. First Nat. Bank of Lewistown v. Tilzey, 238 F Supp 750.

**93-8618. (9802) What are costs and disbursements.****Attorney Fees**

Attorney fees are not included as costs under this section, so that if such costs are not allowed under section 21-137, which requires showing by motion that wife cannot take an appeal without the allowance, she is not entitled to them on execution under section 93-8621. State ex

rel. Sowerwine v. District Court, 145 M 375, 401 P 2d 568.

**References**

Kintner v. Harr, 146 M 461, 408 P 2d 487; State ex rel. Ald, Inc. v. District Court, 147 M 221, 410 P 2d 944.

**93-8621. (9805) Costs on appeal—how claimed.****Execution Void**

In divorce proceeding, inclusion in memorandum of both allowable statutory costs under section 21-137 and attorney's fee, to which the wife was not entitled because of failure to file motion on appeal, constituted noncompliance with this sec-

tion and made the execution void. State ex rel. Sowerwine v. District Court, 145 M 375, 401 P 2d 568.

**References**

State ex rel. Ald, Inc. v. District Court, 147 M 221, 410 P 2d 944.

**93-8625. (9809) Poor person may sue or defend without costs.** Any person may commence and prosecute or defend an action in any of the courts of this state who will file an affidavit stating that he has a good cause of action or defense, that he is unable to pay the costs, or procure security to secure the same; then it is hereby made the duty of the officers of the courts to issue all writs and serve the same, and perform all services in the action, without demanding or receiving their fees in advance.

**History:** En. Sec. 2, p. 71, L. 1869; re-en. Sec. 563, p. 150, Cod. Stat. 1871; amd. Sec. 1, p. 40, Ex. L. 1873; amd. Sec. 503, p. 173, L. 1877; re-en. Sec. 503, 1st Div. Rev. Stat. 1879; re-en. Sec. 516, 1st Div. Comp. Stat. 1887; re-en. Sec. 1873, C. Civ. Proc. 1895; re-en. Sec. 7176, Rev.

C. 1907; re-en. Sec. 9809, R. C. M. 1921; amd. Sec. 1, Ch. 71, L. 1971.

**Amendments**

The 1971 amendment inserted "or defend" and "or defense."

**CHAPTER 89—UNIFORM DECLARATORY JUDGMENTS ACT****93-8901. (9835.1) Scope.**

**NOTE.**—Uniform State Law. In addition to the states listed in the note in the parent volume the following also have adopted the Uniform Declaratory Judgments Act: Oklahoma and Virginia.

**Supreme Court**

Supreme court could accept original jurisdiction in suit for declaratory judgment where statute which taxed nonresident contractors indiscriminately was declared



unconstitutional, since supreme court was a court of record and under its own rules could accept original jurisdiction in emergency situations. *State ex rel. Schultz-Lindsay Constr. Co. v. State Board of Equalization*, 145 M 380, 403 P 2d 635.

#### **Termination of Annexation Proceedings**

Where a majority of the resident freeholders of a first class city validly protested proposed annexation under section 11-403 (1), but city council instead of

terminating the annexation proceedings took arbitrary action, mandamus was proper to compel council to terminate the process. This chapter did not furnish the protestants a plain, speedy and adequate remedy. *State ex rel. Konen v. City of Butte*, 144 M 95, 394 P 2d 753, 757.

#### **References**

*Harrer v. Northern Pacific Ry. Co.*, 147 M 130, 410 P 2d 713.

### **93-8906. (9835.6) Discretionary.**

#### **Discretion of Court**

In absence of showing of abuse of discretion, refusal of lower court to rule on issue for reason that decree would not terminate controversy or remove uncertainty will not be reversed. *Helena Valley Irrig. Dist. v. State Highway Commission*, 150 M 192, 433 P 2d 791.

#### **Dismissal of Action**

Court did not abuse its discretion in dismissing insurance company's action for

declaratory judgment that defendant's policy was void because obtained by fraud, since, under section 93-8911, there were possible parties not joined, defendant having been in an accident several months prior to expiration of the policy, and under this section, court could refuse to enter the judgment on the basis that it would not terminate the controversy as to all parties. *Empire Fire & Marine Ins. Co. v. Goodman*, 147 M 396, 412 P 2d 569.

### **93-8909. (9835.9) Jury trial.**

#### **References**

*Mahan v. Hardland*, 147 M 78, 410 P 2d 156.

### **93-8911. (9835.11) Parties.**

#### **Dismissal of Action**

Court could take into account this section in refusing to grant declaratory judgment in favor of insurance company which claimed that defendant's policy was void when accident in which he was involved occurred because there were other parties not joined and therefore the declar-

atory judgment would not terminate the controversy should other parties sue defendant. *Empire Fire & Marine Ins. Co. v. Goodman*, 147 M 396, 412 P 2d 569.

#### **References**

*Harrer v. Northern Pacific Ry. Co.*, 147 M 130, 410 P 2d 713.

### **93-8912. (9835.12) Construction.**

#### **References**

*Harrer v. Northern Pacific Ry. Co.*, 147 M 130, 410 P 2d 713.

## **CHAPTER 90—CERTIORARI (WRIT OF REVIEW)**

### **93-9002. (9837) When and by what courts granted.**

#### **References**

*Mailey v. Board of County Commrs.*, 142 M 505, 385 P 2d 74.

### **93-9008. (9843) The review under the writ, extent of.**

#### **References**

*Mailey v. Board of County Commrs.*, 142 M 505, 385 P 2d 74.

## CHAPTER 91—MANDAMUS (WRIT OF MANDATE)

**93-9102. (9848) When and by what court issued.****Clear Legal Duty**

Board of county commissioners was properly denied writ of mandate requiring sheriff to provide detailed itemized accounting of county funds received for furnishing board to prisoners of county jail since sheriff has no clear legal duty to provide such an accounting. State ex rel. Lucier v. Murphy, — M —, 478 P 2d 273 (Decision prior to 1971 amendment of section 16-2818).

**Discretionary Actions**

Mandamus lies only to compel performance of an act, not to correct action already done, so that where state board of land commissioners exercised discretion in awarding lease of land to lowest bidder, mandamus was not the proper writ to pursue in seeking a remedy. State ex rel. Thompson v. Babcock, 147 M 46, 409 P 2d 808.

Trial court properly denied writ of

mandate, sought pursuant to this section, to require city to condemn private lands for use as public streets, since this section provides for performance of ministerial duty and not duty or power that requires exercise of discretion. State ex rel. Wiedman v. City of Kalispell, 154 M 31, 459 P 2d 694.

**Termination of Annexation Proceedings**

Where a majority of the resident freeholders of a first class city validly protested proposed annexation under section 11-403 (1), but city council instead of terminating the annexation proceedings, took arbitrary action, mandamus was proper to compel council to terminate the process. The Uniform Declaratory Judgments Act (93-8901 to 93-8916) did not furnish the protestants a plain, speedy and adequate remedy. State ex rel. Konen v. City of Butte, 144 M 95, 394 P 2d 753, 757.

**93-9103. (9849) Writ—when and upon what to issue.****Appealable Matters**

Engineer seeking registration from state board had no right to a writ of mandamus where discretion of the board was subject

to review under section 66-2345. Heldenbrand v. Montana State Board of Registration for Professional Engineers and Land Surveyors, 147 M 271, 411 P 2d 744.

**93-9112. (9858) Damages, costs and peremptory mandate, etc.****References**

State ex rel. Thompson v. Babcock, 147 M 46, 409 P 2d 808.

## CHAPTER 92—PROHIBITION—WRIT OF

**93-9201. (9861) Prohibition defined.****Judicial Error Required**

Writ of prohibition was issued, pursuant to this section, where district court had acted beyond its jurisdiction by enjoining board of equalization from revising grading and valuation on nonirrigated farm land pursuant to section 84-429.7 et seq. State ex rel. Lord v. District Court, 154 M 269, 463 P 2d 323.

**Municipal Corporation**

Lower court properly refused petition for writ of prohibition against city acting within jurisdiction since writ lies only when municipal corporation acts without or in excess of jurisdiction. State ex rel. Pat Griffin Co. v. City of Butte, 151 M 546, 445 P 2d 739.

**References**

State ex rel. Belwin, Inc. v. Davison, 148 M 345, 420 P 2d 842, 844.

## CHAPTER 97—FORCIBLE ENTRY AND UNLAWFUL DETAINER—ACTIONS FOR

**93-9703. (9889) Unlawful detainer defined.****Agricultural Tenant Holding Over**

Statute gives agricultural tenant right to hold over for no other purpose than to harvest crops and protect investment and

does not mean that tenant can exercise option to purchase contained in expired lease. Miller v. Meredith, 149 M 125, 423 P 2d 595.

**Landlord-tenant Relationship Required**

An action for unlawful detainer can succeed only where the relation of landlord-tenant exists. *Kransky v. Hensleigh*, 146 M 486, 409 P 2d 537.

**Unlawful Ejectment**

In case of unlawful ejectment, plaintiff, who had farmed land for three years, paying one third of each crop as rent, was

not a sharecropper but a tenant with an interest in the land for a term and it was proper for the judge to instruct the jury that if plaintiff held without notice to quit more than sixty days after expiration of his term he was deemed to be holding by permission of the defendant-landlords and not guilty of unlawful detainer. *Kenfield v. Curry*, 145 M 174, 399 P 2d 999.

## CHAPTER 98—CONTEMPTS

93-9801. (9908) **What acts or omissions are contempts.****Criticism of Decisions**

Bank president's statement that he was displeased with jury verdict against bank and that jurors could not expect to do business with bank did not constitute contempt under subsection 9, since jurors did continue to do business with bank and since statement came twenty-two days after final disposition of case and could

not have interfered with court proceedings. *State ex rel. Polish v. District Court Third Judicial District in and for County of Powell*, — M —, 478 P 2d 270.

**References**

*Weinheimer v. Scott*, 143 M 243, 388 P 2d 790.

93-9810. (9917) **Judgment and penalty, if guilty.****Excessive Penalty**

District court's sentence of ten days' imprisonment for contempt exceeded

jurisdiction of such court as vested in it by this section. *Fuchs v. District Court*, 153 M 485, 458 P 2d 776.

## CHAPTER 99—EMINENT DOMAIN

Section 93-9905. Facts necessary to be found before condemnation.

93-9912. Appointment and meeting of commissioners.

93-9913. The date with respect to which compensation shall be assessed.

93-9902. (9934) **What are public uses.****Electric Power**

Legislature has specifically declared that an electric power line is public use for which private property may be taken by eminent domain proceedings under this section, and public use is not confined

to actual use by public, but is measured in terms of right of public to use proposed facilities for which condemnation is sought. *Montana Power Co. v. Bokma*, 153 M 390, 457 P 2d 769.

93-9904. (9936) **Private property defined—classes enumerated.****Discretionary Actions**

Action brought to compel state highway commission to construct two-interchanges on new interstate highway near town, instead of one interchange as planned, was improperly brought under this section since this section pertains to eminent domain proceedings and issues presented by action were matters of administrative law under section 32-2406. *Erie v. State ex rel. State Highway Commission*, 154 M 150, 461 P 2d 207.

state highway, district court had power to require state to incorporate in its construction plans such structures as would allow two-lane access across county road; but district court did not have power to require state to submit such plans to court for its approval since such matters were within purview of activities of highway commission. *State ex rel. State Highway Commission v. Lavoie*, — M —, 466 P 2d 594.

**Judicial Review**

In condemnation proceeding involving access to portion of farm divided by inter-

**More Necessary Public Use**

Requirement under section 93-9906 that taking of private property by condemnation proceedings must be compatible with



greatest public good and least private injury applies specifically to easements and rights of way under this section. *Montana Power Co. v. Bokma*, 153 M 390, 457 P 2d 769.

#### Underpass

Where 40.89 acres of ranch land were taken by the state highway commission as a right of way for an interstate highway, consisting of four lanes in width and fully controlled access, which split the remain-

ing land into two divisions, leaving 432.69 acres, on which farm headquarters was located, on the north side of the highway and 393.42 acres on the south side of the highway, trial court in its preliminary order of condemnation properly ordered the commission to construct and maintain at its own expense an underpass leading from one side of the highway to the other. *State ex rel. State Highway Commission v. Wheeler*, 148 M 246, 419 P 2d 492, 496.

**93-9905. (9937) Facts necessary to be found before condemnation. 1 and 2. \* \* \*** [Same as parent volume.]

3. If already appropriated to some public use, that the public use to which it is to be applied is a more necessary public use. The plaintiff or defendant, or any party interested in the proceedings, can appeal to the supreme court from any finding or judgment made or rendered under this chapter, as in other cases. Such appeal does not stay any further proceedings under this chapter, except that the district court on motion or ex parte may grant a stay for such period of time and under such conditions as the court deems proper.

**History:** En. Sec. 583, p. 191, L. 1877; re-en. Sec. 583, 1st Div. Rev. Stat. 1879; re-en. Sec. 601, 1st Div. Comp. Stat. 1887; amd. Sec. 2214, C. Civ. Proc. 1895; re-en. Sec. 7334, Rev. C. 1907; re-en. Sec. 9937, R. C. M. 1921; amd. Sup. Ct. Ord. 11020, eff. January 1, 1966. Cal. C. Civ. Proc. Sec. 1241.

#### Advisory Committee's Note

Subdivision (f) Rule 41, M. R. App. Civ. P., amends the provision of subdivision 3 of this section to permit the district court to stay proceedings on appeals in eminent domain cases, as is permitted by Rule 7(a) of these rules in other cases. See Tables A, B, C, M. R. App. Civ. P. for reference to other amendments.

#### Amendments

The 1965 amendment added the exception at the end of the section.

#### Burden of Proof

Where commission condemned defendant's land to build bypass through it rather than reconstruct highway through town, it became incumbent upon the defendant to show fraud, abuse of discretion or arbitrary action in order to defeat the commission's action, while the commission had only to establish that the taking of the property was reasonably necessary for rebuilding the highway. *State Highway Commission v. Crossen-Nissen Co.*, 145 M 251, 400 P 2d 283.

#### Condemnor's Discretion

Highway commission did not abuse its discretion in taking farm land by eminent domain even though it was shown that

town through which old highway had passed would be financially harmed and bypass would cost more to build, since the resulting savings in travel costs to highway users, in addition to the compensation paid the petitioners, offset disadvantages claimed by them. *State Highway Commission v. Crossen-Nissen Co.*, 145 M 251, 400 P 2d 283, distinguished in *State Highway Commission v. Daniels*, 146 M 539, 409 P 2d 443.

#### Necessity of Use

Even when necessity has been challenged on the ground of arbitrariness or excessiveness of the taking, condemnor still has discretion to determine the location, route and area of the land to be taken. *State Highway Commission v. Crossen-Nissen Co.*, 145 M 251, 400 P 2d 283.

The word "necessary" as used in this section does not mean that the property must be indispensable to the proposed project, but that it must be reasonably requisite and proper for the accomplishment of the purpose for which it is sought under the peculiar circumstances of each case. *State Highway Commission v. Crossen-Nissen Co.*, 145 M 251, 400 P 2d 283.

Before district court may order condemnation, this section requires that it must find that proposed taking is necessary to public use under circumstances of individual case. *Montana Power Co. v. Bokma*, 153 M 390, 457 P 2d 769.

#### References

*State Highway Commission v. Daniels*, 146 M 539, 409 P 2d 443.

**93-9906. (9938) Parties may make location—may enter, etc.****Compatible with Public Good**

Where power company had studied alternate routes for power lines, surveyed surrounding area and determined that best possible route for such line was across defendant's property, utility had complied with this section in that taking of private property was compatible with

greatest public good and least private injury. *Montana Power Co. v. Bokma*, 153 M 390, 457 P 2d 769.

**References**

*State Highway Commission v. Danielson*, 146 M 539, 409 P 2d 443.

**93-9911. (9943) Power of court—preliminary condemnation order.****Access Rights**

In condemnation proceeding involving access to portion of farm divided by interstate highway, district court had power to require state to incorporate in its construction plans such structures as would allow two lane access across county road; but district court did not have power to require state to submit such plans to court for its approval since such matters were within purview of activities of highway commission. *State ex rel. State Highway Commission v. Lavoie*, — M —, 466 P 2d 594.

**Necessity of Use**

Before district court may order condemnation, this section requires that it must find that proposed taking is necessary to public use under circumstances of

individual case. *Montana Power Co. v. Bokma*, 153 M 390, 457 P 2d 769.

**Underpass**

Where 40.89 acres of ranch land were taken by the state highway commission as a right of way for an interstate highway, consisting of four lanes in width and fully controlled access, which split the remaining land into two divisions, leaving 432.69 acres, on which farm headquarters was located, on the north side of the highway and 393.42 acres on the south side of the highway, trial court in its preliminary order of condemnation properly ordered the commission to construct and maintain at its own expense an underpass leading from one side of the highway to the other. *State ex rel. State Highway Commission v. Wheeler*, 148 M 246, 419 P 2d 492, 496.

**93-9912. (9944) Appointment and meeting of commissioners.** Immediately upon making and entering the preliminary condemnation order the judge must meet with the respective parties, or their attorneys of record, for the purpose of appointing condemnation commissioners to ascertain and determine the amount to be paid by the plaintiff to each owner or other persons interested in such property by reason of the appropriation of such property. The court must thereupon appoint three (3) qualified, disinterested condemnation commissioners. One of such commissioners shall be nominated by the party or parties plaintiff; one of such commissioners shall be nominated by the party or parties defendant. The third commissioner shall be the chairman and shall be nominated by the two (2) commissioners previously nominated, provided, however, that if said two (2) commissioners fail to make such choice at the time of their appointment, then such nomination shall be made by the presiding judge. Each commissioner shall possess the following qualifications: a citizen of the United States and over eighteen (18) years of age; that he is not more than seventy (70) years of age; that he is in possession of natural faculties, of ordinary intelligence and not decrepit; that he is possessed of sufficient knowledge of the English language; that he was assessed on the last assessment roll of a county within the judicial district in which the action is pending; that he has not been convicted of malfeasance in office, or any felony or other high crime; that he is not related within the sixth degree to any party; that he does not stand in the relation of guardian and ward, master and servant,

debtor and creditor, or principal and agent, or partner or surety as to any party. At the time of such meeting and nominations there shall be filed with the court by each nominating party or judge an affidavit of the person so nominated stating substantially as follows: that he has formed no unqualified opinion or belief as to the compensation to be awarded in the proceeding or as to the fairness or unfairness of the plaintiff's offer for the lands and improvements of the defendants; and that he has no enmity against or bias in favor of any party and has not discussed, communicated or overheard or read any discussion or communication from any party relating to values of the lands in question or the compensation offered, demanded or to be awarded; that if selected as a condemnation commissioner he is willing to serve and will well and truly try the issues of compensation and a true decision render according to the evidence and in compliance with the instructions of the court; that he will not discuss the case with anyone except the other commissioners until a decision has been filed with the court.

Immediately upon such nomination and appointment of commissioners the same shall proceed to meet at the time and place stated in the order appointing them, which time shall be not more than ten (10) days after the order of appointing, and proceed to examine the lands sought to be appropriated. At a time appointed by the judge and within said ten (10) day period they shall hear the allegations and evidence of all persons interested in each of the several parcels of land. Such hearing shall be attended by, and presided over by, the presiding judge who shall make all necessary rulings upon procedure and the admissibility of evidence. At the conclusion of the aforesaid hearing, the court or judge shall instruct the commissioners as to the law applicable to their deliberations and shall instruct them that their duty is to determine, solely upon the basis of said examination of lands, the evidence produced at the hearing or hearings and the instructions of the court, the following:

1. to 4. \* \* \* [Same as parent volume.]

5. Where there are two (2) or more estates or divided interests in property sought to be condemned, the plaintiff is entitled to have the amount of the award, for said property first determined, as hereinbefore stated, as between plaintiff and all defendants claiming any interests therein; thereafter in the same proceeding the respective rights of each of such defendants in and to the award shall be determined by the commissioners, under supervision and instruction of the court, and the award apportioned accordingly.

**History:** En. Sec. 608, 1st Div. Comp. Stat. 1887; amd. Sec. 1, p. 269, L. 1891; amd. Sec. 2221, C. Civ. Proc. 1895; re-en. Sec. 7341, Rev. C. 1907; re-en. Sec. 9944, R. C. M. 1921; amd. Sec. 4, Ch. 234, L. 1961; amd. Sec. 19, Ch. 423, L. 1971. Cal. C. Civ. Proc. Sec. 1248.

#### Amendments

The 1971 amendment reduced the minimum age specified in the fifth sentence of the first paragraph from 21 to 18 years, and made minor changes in style.

#### Apportionment of Damages

It was not error for the jury to express its award of damages separately to lessor and lessee rather than state a single lump sum when such award was not excessive, was supported by substantial evidence, and did not reflect an increased valuation due solely to a distribution of interest. *State Highway Commission v. City Service Co.*, 142 M 559, 385 P 2d 604, distinguished in *State Highway Commission v. Barnes*, 151 M 300, 443 P 2d 16.



**Expert Testimony as to Value**

Testimony of expert witnesses showing that although presently used for agricultural purposes, highest and best use of land was for residential subdivision, showing comparative values of similar land in same geographical area, and showing how property could have been subdivided and how highway running through it detracted from its suitability for subdivision, was sufficient to sustain jury's verdict as against contention of state that expert witnesses based their opinions on mere speculation. *Montana State Highway Commission v. Jacobs*, 150 M 322, 435 P 2d 274.

**Measure of Damages—Leasehold Interests**

The proper value of a leasehold interest is the fair market value not the market value less future rent to be paid. *State Highway Commission v. City Service Co.*, 142 M 559, 385 P 2d 604.

**Severance Damages**

While it is proper for the trial court to determine whether there has been an impairment of access, the question of the extent to which access has been impaired is for the jury, and it was not error for the court to refuse to give instructions to

the effect that all means of access to the defendant's property had been destroyed. *State Highway Commission v. Manry*, 143 M 382, 390 P 2d 97.

To determine what is "remainder" of property taken under statute providing for damages for depreciation in value of portion of land not sought to be condemned, there are generally three tests: (1) unity of ownership, (2) contiguity, (3) unity of use; claimant who conveyed part of tract of subsequently condemned land to corporation was not entitled to compensation for depreciation in value to land he still held because claimant and corporation were two distinct owners and hence unity of ownership was absent even though claimant was majority shareholder of corporation and lands were contiguous. *Montana State Highway Commission v. Robertson & Blossom Inc.*, 151 M 205, 441 P 2d 181.

**Verdict Form**

It was not prejudicial error for the trial judge to give the jury a verdict form which was in accord with this section and which verdict was not out of proportion to the damage done the defendant. *State Highway Commission v. Manry*, 143 M 382, 390 P 2d 97.

**93-9913. (9945) The date with respect to which compensation shall be assessed.** For the purpose of assessing compensation the right thereto shall be deemed to have accrued at the date of the service of the summons, and its actual value as of that date shall be the measure of compensation for all property to be actually taken, and the basis of depreciation in value of property not actually taken, but injuriously affected. This shall not be construed to limit the amount of compensation payable by the state highway commission under the provisions of any legislation enacted pursuant to the Federal Highway Beautification Act of 1965. If an order be made letting the plaintiff into possession, as provided in section 93-9920, the full amount finally awarded shall draw lawful interest from the date on which the property owner surrenders possession of the property in accordance with the terms of such order to the earlier of the following dates:

(a) The date on which the right to appeal to the Montana supreme court expires, or if appeal is filed, to the date of final decision by the supreme court, or

(b) The date on which the property owner withdraws from court the full amount finally awarded.

If the property owner withdraws from court a fraction of the amount finally awarded, interest on such fraction shall cease on the date it is withdrawn but interest on the remainder of the amount finally awarded shall continue to the earlier of the aforesaid dates defined in (a) and (b) of this section. None of the amount finally awarded shall draw interest after the date on which the right to appeal to the Montana supreme court

expires. No improvements put upon the property, subsequent to the date of the service of summons, shall be included in the assessment of compensation or depreciation in value, nor shall the same be used as the basis of computing such compensation or depreciation.

**History:** En. Sec. 591, p. 194, L. 1877; re-en. Sec. 591, 1st Div. Rev. Stat. 1879; re-en. Sec. 609, 1st Div. Comp. Stat. 1887; amd. Sec. 2222, C. Civ. Proc. 1895; re-en. Sec. 7342, Rev. C. 1907; re-en. Sec. 9945, R. C. M. 1921; amd. Sec. 1, Ch. 133, L. 1957; amd. Sec. 5, Ch. 234, L. 1961; amd. Sec. 1, Ch. 182, L. 1965; amd. Sec. 1, Ch. 187, L. 1967; amd. Sec. 12, Ch. 212, L. 1969. Cal. C. Civ. Proc. Sec. 1249.

#### Compiler's Notes

The Federal Highway Beautification Act of 1965, referred to in the first paragraph of this section, is compiled in the United States Code as Tit. 23, secs. 131, 136 and 319.

#### Amendments

The 1965 amendment divided the section into paragraphs; substituted "full amount finally awarded" for "amount awarded" before "shall draw lawful interest" in the third sentence of the first paragraph; substituted "earlier of the following dates" and clauses (a) and (b) at the end of the first paragraph for "date of receipt of the award or any portion thereof"; and substituted the first two sentences of the final paragraph for "provided, however, that interest shall not be allowed or paid on so much thereof as shall have been paid to the landowner involved or withdrawn by such landowner from the court."

The 1967 amendment added to the first sentence of the initial paragraph, "and the reasonable cost of removal of all necessary personal property from the condemned real property within a reasonable distance in the area, not to exceed the sum of six thousand dollars (\$6,000) in the case of a business, farm or ranch relocation, and not to exceed the sum of four hundred dollars (\$400) in any other case"; inserted the second sentence; and, at the end of subparagraph (a), added "if appeal is filed to the date of final decision by the supreme court, or."

The 1969 amendment deleted the provision, inserted by the 1967 amendment, concerning removal of personalty.

#### Separability Clause

Section 2 of Ch. 182, Laws 1965 read "If any section, paragraph, sentence, clause or provision of this act shall for any reason be held invalid or unenforceable, the invalidity or unenforceability thereof shall not affect any of the remaining sections, paragraphs, sentences, clauses or provisions of this act."

#### Repealing Clause

Section 3 of Ch. 182, Laws 1965 read "All acts, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any act or part thereof, heretofore repealed."

#### Effective Date

Section 4 of Ch. 182, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 4, 1965.

#### Appeal

In eminent domain proceedings the findings of the district court will generally not be disturbed on appeal unless they are so obviously and palpably out of proportion to the injury done as to be in excess of just compensation provided for by section 14, article III of the Montana constitution. *State Highway Commission v. Woodcock*, 147 M 291, 411 P 2d 357.

#### Assessment of Compensation

Where condemnee's house was between 50 and 60 years old and had been converted into a multiple family dwelling, court did not err in excluding evidence of reconstruction costs or comparable sales elsewhere in determining value of the property since there was no way of determining depreciation of the old house in arriving at reconstruction cost figures, nor were there sufficient comparable sales in the area. *State Highway Commission v. Tubbs*, 147 M 296, 411 P 2d 739.

#### Commercial Use

Where state highway commission in order to show public access to highway presented two appraisal witnesses to show that there was access at a certain exit in which case there would be no loss of commercial usefulness, it was quite proper and necessary to rebut this testimony and to let the jury know the type of easement provided for the access exit. *State ex rel. State Highway Commission v. Wheeler*, 148 M 246, 419 P 2d 492, 498.

#### Cost of Moving Personal Property

Where friends of condemnees gratuitously aided them in moving personal property from condemned realty, condemnees were not entitled to recover the costs of their friends' labor as an element of damages. *State Highway Commission v. Manry*, 143 M 382, 390 P 2d 97.



### Depreciation on Inventory

This section requires the state to pay for any damage to personal property removed from condemned land including any depreciation in the inventory value of such property. *State Highway Commission v. City Service Co.*, 142 M 559, 385 P 2d 604.

### Improvements

In eminent domain proceeding trial court did not err in excluding evidence concerning improvement of sole access road to ranch property remaining after state highway commission had taken part of the property for right of way for interstate highway, where any changes in access were made after the date of service of the summons in the condemnation action. *State ex rel. State Highway Commission v. Wheeler*, 148 M 246, 419 P 2d 492, 497.

### Market Value

The proper value of a leasehold interest is the fair market value not the market value less future rent to be paid. *State Highway Commission v. City Service Co.*, 142 M 559, 385 P 2d 604.

Where state not only took part of plaintiff's land, but also eliminated an old channel of water and diked up a new channel, thus creating a flood basin on plaintiff's land, evidence of actual results of taking was proper, even though land values are usually measured as of the date of summons. *State Highway Commission v. Biastoch Meats, Inc.*, 145 M 261, 400 P 2d 274.

When there is a market for the type of property being condemned, and the property has no other intrinsic value, courts will adopt a market value in determining the actual value of the property, which is nothing more than the price resulting from fair negotiations between a willing seller and buyer. *State Highway Commission v. Tubbs*, 147 M 296, 411 P 2d 739.

Where actual value as determined by jury is based on credible testimony as to market value of highest and best use for which land is available, the verdict and judgment will not be set aside. *State Highway Commission v. Vaughan*, — M —, 470 P 2d 967.

### References

*State Highway Commission v. Churchwell*, 146 M 52, 403 P 2d 751.

## 93-9915. (1947) Appeal from assessment of commissioners.

### Apportionment of Damages

It was not error for the jury to express its award of damages separately to lessor and lessee rather than state a single lump sum when such award was not excessive, was supported by substantial evidence,

and did not reflect an increased valuation due solely to a distribution of title. *State Highway Commission v. City Service Co.*, 142 M 559, 385 P 2d 604, distinguished in *State Highway Commission v. Barnes*, 151 M 300, 443 P 2d 16.

## 93-9917. (1949) Payment of damages or deposit of bond therefor.

### Delay in Payment of Damages

In eminent domain proceedings where the state highway commission did not move within thirty days as required by this section, it could not excuse its failure

to pay by alleging that it had no notice of the entry of judgment when the commission itself had caused the judgment to be entered. *Robertson v. State Highway Commission*, 148 M 275, 420 P 2d 21, 24.

## 93-9918. (1950) Damages—to whom paid.

### Delay in Payment of Damages

In eminent domain proceeding where the state highway commission did not move within thirty days as required by section 93-9917, it could not excuse its failure to pay by alleging that it had no notice of the entry of the judgment when the commission itself had caused the judgment to be entered. *Robertson v. State Highway Commission*, 148 M 275, 420 P 2d 21, 24.

### Stay of Execution

Where state highway commission filed notice of appeal and perfected their appeal after writ of execution under this section had issued, the appeal stayed the judgment although no bond was filed as required by section 93-8011 since under Rule 62(e), no security was required from the state. *Robertson v. State Highway Commission*, 148 M 275, 420 P 2d 21, 24.

## 93-9920. (1952) Putting plaintiff in possession.

### References

*State Highway Commission v. Schmidt*, 143 M 505, 391 P 2d 692 (concurring

opinion); *State Highway Commission v. Churchwell*, 146 M 52, 403 P 2d 751.



CHAPTER 100—NAMES—CHANGE OF NAMES OF PERSONS  
—OF WATERCOURSES

Section 93-100-2. Application for change of name—how made.

**93-100-2. (9964) Application for change of name—how made.** All applications for change of names must be made to the district court of the county where the person whose name is proposed to be changed resides, by petition, signed by such person; and if such person is under nineteen (19) years of age, by one of the parents, if living, or if both be dead, then by the guardian; and if there be no guardian, then by some near relative or friend. The petition must specify the place of birth and residence of such person, his or her present name, the name proposed, and the reason for such change of name; and must, if the father of such person be not living, name, as far as known to the petitioner, the near relatives of such person, and their place of residence. Any religious, benevolent, literary, scientific corporation, or any corporation bearing or having for its name, or using or being known by the name of, any benevolent or charitable order or society, may, by petition, apply to the district court of the county in which its articles of incorporation were originally filed, or in which the property of such corporation is situated, for a change of its corporate name. Such petition must be signed by a majority of the directors or trustees of the corporation, and must specify the date of the formation of the corporation, the name proposed, and the reason for such change of name. Upon filing such petition on behalf of such corporation, the same proceedings shall be had as upon applications for changes of names of natural persons, and no banking corporation hereafter organized shall adopt or use the name of any other banking corporation or association, or of any friendly association.

**History:** En. Sec. 2261, C. Civ. Proc. 1895; re-en. Sec. 7361, Rev. C. 1907; amd. Sec. 1, Ch. 39, L. 1921; re-en. Sec. 9964, R. C. M. 1921; amd. Sec. 21, Ch. 240, L. 1971.

**Amendments**

The 1971 amendment changed the age specified in the first sentence from 21 for males and 18 for females to 19 for either.

## CHAPTER 301—EVIDENCE—DEFINITIONS—KINDS AND DEGREES OF

93-301-4. (10491) The degree of proof required to establish facts.

**Criminal Cases**

Evidence that included victim's testimony corroborated by medical evidence was sufficient to support jury conviction of statutory rape. *State v. Anderson*, — M —, 476 P 2d 780.

**Insufficient Evidence**

Where lessee alleged breach of covenant of quiet enjoyment on grounds that he had been substantially deprived of his pro rata share of parking spaces in shopping center lot, his evidence in support of allegations was insufficient under this section and section 93-301-13 since it consisted only of testimony that on one occasion parking lot was full but only three tables were occupied in lessee's restaur-

ant. *Joseph v. Hustad Corp.*, 153 M 121, 454 P 2d 916.

Where owner of mineral rights to property built road for access to his oil well on property owned by plaintiff and such road was alleged to have been causing plaintiff's dam and spillway to erode, jury verdict of damages for such injury was reversed, since dam and spillway had not in fact washed out and evidence did not indicate conclusively that washout was inevitable; therefore plaintiff's evidence did not preponderate in favor of findings on which it was based as provided by this section and section 93-301-13. *Hurley v. Northern Pacific R. Co.*, 153 M 199, 455 P 2d 321.

**93-301-11. (10498) Prima-facie evidence defined.****Ownership of Cattle**

Although under sections 46-606 and 67-308 prima facie the owners of the recorded brand have the same interest in the cattle bearing their brand as shown in brand record, joint ownership of the cattle may be contradicted and overcome by other evidence under this section. *Marshall v. Minlschmidt*, 148 M 263, 419 P 2d 486, 490.

In action by administrator of estate of deceased partner against surviving partners to recover assets transferred by deceased during his last illness, evidence that deceased had a half interest in partnership cattle and failure of defendants

to produce any of the partnership records at the trial in the lower court, sustained finding that heir of deceased had overcome the prima facie showing of one-third interest in the partnership cattle arising from the recording of the brand in name of three persons. *Marshall v. Minlschmidt*, 148 M 263, 419 P 2d 486, 491.

**Statutory Rape**

Prima facie case of statutory rape was established by testimony of rape victim on cross- and redirect examination that defendant had committed an act of sexual intercourse with her. *State v. Anderson*, — M —, 476 P 2d 780.

**93-301-13. (10500) Satisfactory evidence defined.****Insufficient Evidence**

Where lessee alleged breach of covenant of quiet enjoyment on grounds that he had been substantially deprived of his pro rata share of parking spaces in shopping center lot, his evidence in support of allegations was insufficient under this section and section 93-301-4 since it consisted only of testimony that on one occasion parking lot was full but only three tables were occupied in lessee's restaurant. *Joseph v. Hustad Corp.*, 153 M 121, 454 P 2d 916.

Where owner of mineral rights to property built road for access to his oil well on property owned by plaintiff and such road was alleged to have been causing plaintiff's dam and spillway to erode, jury verdict of damages for such injury was reversed since dam and spillway had not in fact washed out and evidence did not indicate conclusively that washout was inevitable; therefore plaintiff's evidence did not preponderate in favor of findings on which it was based as provided by this section and section 93-301-4. *Hurley v. Northern Pacific R. Co.*, 153 M 199, 455 P 2d 321.

**CHAPTER 401—EVIDENCE—GENERAL PRINCIPLES OF****93-401-4. (10508) Witness presumed to speak the truth.****Accomplice as Witness**

In a first degree burglary case the credibility of the defendant's accomplice, a

convicted felon, was for the jury. *State v. Barick*, 143 M 273, 389 P 2d 170.

**93-401-7. (10511) Declarations which are a part of the transaction.****Time between Transaction and Declaration**

In a negligence action by passenger of car struck by truck, testimony of truck driver concerning declarations of driver of

automobile concerning speed at which he was traveling was admissible even though made some ten minutes after collision. *Blevins v. Weaver Constr. Co.*, 150 M 158, 432 P 2d 378.

**93-401-9. (10513) Declaration of decedent evidence of pedigree.****References**

Cited in *Bender v. Bender*, 144 M 470, 397 P 2d 957.

**93-401-11. (10515) When part of the transaction proved, etc.****References**

*State Highway Commission v. Churchwell*, 146 M 52, 403 P 2d 751.

**93-401-12. (10516) Contents of writing—how proved.****Duplicate Original**

Carbon copy made at same time as original and with all formalities of the first sheet was a "duplicate original" and thereby properly admitted as original retail installment contract without explanation of failure to produce the ribbon copy. *Morris v. Langhausen*, — M —, 472 P 2d 860.

**Laboratory Test Results**

In an action for damages for death of dairy cows and losses occasioned by poisoning, allowing cattle owner to testify concerning laboratory test results was not prejudicial where the testimony was brought out properly later without objection. *Hopkins v. Ravalli County Electric Cooperative, Inc.*, 144 M 161, 395 P 2d 106, 109, 12 ALR 3d 1096.

**93-401-13. (10517) An agreement reduced to writing deemed the whole.****Clear Language**

No ambiguity existed between clause conveying one-half of the minerals in 1,040 acres and the conveyance of 520 mineral acres, so that mineral deed could not be varied by parol evidence. *Superior Oil Co. v. Vanderhoof*, 297 F Supp 1086.

or contradict terms of express written contract since such statements and assurances did not come within any recognized exception to rule and since defendant admitted that he knew written contract would be controlling. *United States v. Willard E. Fraser Co.*, 308 F Supp 557.

**Completeness of Writing**

Statements made by various agency personnel in regard to continued use of defendant's office building were not admissible under parol evidence rule to alter

**References**

*State Highway Commission v. Churchwell*, 146 M 52, 403 P 2d 751; *Thisted v. Country Club Tower Corp.*, 146 M 87, 405 P 2d 432.

**93-401-15. (10519) Construction of statutes and instruments, etc.****Insurance Policy**

Clause in disability insurance policy which provided that benefits were payable only in cases involving continuous and total disability within 30 days of date of accident preventing performance of every duty pertaining to insured's occupation, precluded recovery under policy by insured who returned to work temporarily within 30-day period and was able to do a portion of his duties since,

where language admits of only one meaning, there is no room for interpretation under the guise of ambiguity. *Nelson v. Combined Ins. Co. of America*, — M —, 467 P 2d 707.

**References**

*In re Jones' Estate*, 146 M 439, 408 P 2d 482; *Wolff v. Standard Life & Accident Ins. Co.*, 147 M 460, 416 P 2d 11, 17.

**93-401-17. (10521) The circumstances to be considered.****Building Lease**

Statements made by various agency personnel in regard to continued use of defendant's office building were not admissible under parol evidence rule to alter or contradict terms of express written contract since such statements and assurances did not come within any recognized exception to rule and since defendant admitted that he knew written contract would be controlling. *United States v. Willard E. Fraser Co.*, 308 F Supp 557.

*Faith Lutheran Retirement Home v. Veis*, — M —, 473 P 2d 503.

**Mineral Deed**

No ambiguity existed between clause conveying one-half of the minerals in 1,040 acres and the conveyance of 520 mineral acres, so that mineral deed could not be varied by parol evidence. *Superior Oil Co. v. Vanderhoof*, 297 F Supp 1086.

**References**

*Close v. Ruegsegger's Estate*, 143 M 32, 386 P 2d 739; *Thisted v. County Club Tower Corp.*, 146 M 87, 405 P 2d 432; *Ryan v. Ald, Inc.*, 146 M 299, 406 P 2d 373.

**Intention of Parties**

Informal written instrument stating "I wish to pay" and uncontradicted evidence that donor rejected lawyers and wanted to give a gift established donative intent.



**93-401-26. (10530) Affirmative only can be proved.****Notice**

Where plaintiff alleged giving of notice which defendant denied, notice or lack thereof was put in issue and plaintiff had burden of proof. *Glacier General Assurance Co. v. State Farm Mutual Automobile Ins. Co.*, 150 M 452, 436 P 2d 533.

**Partial Payment**

Partial payment by special deposit was an affirmative defense which debtor had

burden of proving in suit on note; that burden of proof required that it be shown that payment was made on the particular obligation in controversy. *Baker Nat. Bank v. Lestar*, 153 M 45, 453 P 2d 774.

**References**

*Colarchik v. Watkins*, 144 M 17, 393 P 2d 786.

**93-401-27. (10531) Facts which may be proved on trial.****Admission by Living Person**

In an action by property owner against church camp for damage from fire begun by camp counselor, letter written by counselor admitting starting fire accidentally was inadmissible as declaration against interest since counselor, although unavailable to testify, was not dead within requirement of subdivision 4. *MacDonald v. Protestant Episcopal Church*, 150 M 332, 435 P 2d 369.

**Admissions against Interest—Pleadings**

Pre-trial order which limited issues to be litigated did not supersede plaintiff's original complaint to sustain trial court's ruling that defendant could not use complaint to cross-examine plaintiff concerning certain inconsistencies between plaintiff's original complaint and his testimony; although this refusal by trial court was error, it was not ground for reversal since error was "harmless." *Fox v. Fifth West, Inc.*, 153 M 95, 454 P 2d 612.

**Expert Testimony**

Ex-highway patrolman, who had twenty

years' experience investigating automobile accidents, including determinations of speed from skidmarks and surrounding circumstances, and was skilled in use of graphs and charts used by National Safety Council and Montana Highway Patrol in connection with determining speed from skidmarks, was qualified to give expert opinion evidence as to speed of defendant's automobile, even though he had retired from highway patrol some six years previously, had first heard of accident two weeks before trial, did not measure drag factor or coefficient of friction on particular road surface involved and, as mere highway patrolman, would not have been permitted to testify to investigation made year and one-half after accident. *Graham v. Rolandson*, 150 M 270, 435 P 2d 263.

**References**

*Cited in Bender v. Bender*, 144 M 470, 397 P 2d 957; *McReynolds v. McReynolds*, 147 M 476, 414 P 2d 531.

## CHAPTER 501—EVIDENCE—JUDICIAL NOTICE OF FACTS AND FOREIGN LAWS

**93-501-1. (10532) Certain facts of general notoriety assumed to be, etc.****Actual Knowledge**

The burden of proof is on the individual litigant, and the courts are not required by the doctrine of judicial notice to inform themselves of facts not within the actual knowledge of the court, nor need the courts take judicial notice of a fact or facts when the party desiring such notice does not request it. *Holtz v. Babcock*, 143 M 341, 389 P 2d 869, 390 P 2d 801.

**Succession to Office**

The court took notice that upon his death the governor was succeeded as provided by law. *Holtz v. Babcock*, 143 M 341, 389 P 2d 869, 390 P 2d 801.

**References**

*Rambur v. Diehl Lumber Co.*, 144 M 84, 394 P 2d 745, 749; *State v. Peters*, 146 M 188, 405 P 2d 642.

## CHAPTER 701—EVIDENCE—WITNESSES

Section 93-701-4. Persons in certain relations cannot be examined.

## 93-701-1. (10533) Witness defined.

**References**

State v. Barick, 143 M 273, 389 P 2d 170.

## 93-701-2. (10534) All persons capable of perceptions, etc.

**Felony Conviction**

An accomplice may testify in a criminal case even though he is a convicted felon

at the time of his testimony. State v. Barick, 143 M 273, 389 P 2d 170.

## 93-701-3. (10535) Persons who cannot be witnesses.

**Decedent's Estates—Written Communications**

Trial court's finding based upon oral testimony concerning terms of contract executed by deceased was error since such oral testimony, varying terms of written contract, was inadmissible under

this section. Davison v. Casebolt, 154 M 125, 461 P 2d 2.

**References**

State v. Barick, 143 M 273, 389 P 2d 170.

93-701-4. (10536) Persons in certain relations cannot be examined. There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore, a person cannot be examined as a witness in the following cases:

1. to 6. \* \* \* [Same as parent volume.]

7. A counselor, psychologist, nurse, or teacher, employed by any educational institution, cannot be examined as to communications made to him in confidence by a duly registered student of such institution, provided however, that this provision shall not apply where consent has been given by the student, if not a minor, or if he is a minor, by the student and his parent or legal guardian.

**History:** Ap. p. Secs. 373-377, pp. 210, 211, L. 1867; re-en. Secs. 447-451, p. 125, Cod. Stat. 1871; en. Secs. 629, 630, pp. 203, 204, L. 1877; re-en. Secs. 629, 630, 1st Div. Rev. Stat. 1879; re-en. Secs. 650, 651, 1st Div. Comp. Stat. 1887; re-en. Sec. 3163, C. Civ. Proc. 1895; re-en. Sec. 7892, Rev. C. 1907; re-en. Sec. 10536, R. C. M. 1921; amd. Sec. 1, Ch. 83, L. 1925; amd. Sec. 1, Ch. 130, L. 1931; amd. Sec. 1, Ch. 61, L. 1971.

**Amendments**

The 1971 amendment added subdivision 7.

**Criminal Actions**

The physician-patient privilege under subsection (4) of this section is not available to a defendant in a criminal action since the provision in section 94-7209 incorporating the civil rules of evidence into the criminal law "except as otherwise provided" pertains to the language of subsection (4) which specifically limits the privilege to civil actions. State v. Campbell, 146 M 251, 405 P 2d 978, 22 ALR 3d 824.

**References**

State v. Barick, 143 M 273, 389 P 2d 170.

CHAPTER 801—EVIDENCE—UNIFORM BUSINESS RECORDS AS  
EVIDENCE ACT—UNIFORM PHOTOGRAPHIC COPIES OF  
BUSINESS AND PUBLIC RECORDS AS EVIDENCE ACT

Section 93-801-5. Reproductions of originals.

93-801-1. "Business" defined.

NOTE.—Uniform State Law. In addition to the states listed in the note in the parent volume the following also have

adopted the Uniform Business Records as Evidence Act: Connecticut, Michigan, and Rhode Island.

**93-801-5. Reproductions of originals.** If any business, institution, member of a profession or calling, or any department or agency of government, in the regular course of business or activity has kept or recorded any memorandum, writing, entry, print, representation or combination thereof, of any act, transaction, occurrence or event, and in the regular course of business has caused any or all of the same to be recorded, copied or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic, or other process which accurately reproduces or forms a durable medium for so reproducing the original, the original may be destroyed in the regular course of business unless its preservation is required by law. Such reproduction, when satisfactorily identified, is as admissible in evidence as the original itself in any judicial or administrative proceeding, whether the original is in existence or not, and an enlargement or facsimile of such reproduction is likewise admissible in evidence, if the original reproduction is in existence and available for inspection under direction of court. The introduction of a reproduced record, enlargement or facsimile, does not preclude admission of the original.

**History:** En. Sec. 1, Ch. 100, L. 1953; amd. Sec. 1, Ch. 160, L. 1969.

**Amendments**

The 1969 amendment deleted a limitation in the first sentence that original may be destroyed unless "held in a custodial or fiduciary capacity."

NOTE.—Uniform State Law. In addition to the states listed in the note in the parent volume the following also have adopted the Uniform Photographic Copies of Business and Public Records as Evidence Act: Arkansas, Delaware, Michigan, and West Virginia.

CHAPTER 901—EVIDENCE—UNIFORM OFFICIAL REPORTS AS  
EVIDENCE ACT

93-901-1. Official reports admissible as evidence.

NOTE.—Uniform State Law. Sections 93-901-1 through 93-901-5 constitute the "Uniform Official Reports as Evidence Act" approved by the National Conference of Commissioners on Uniform State Laws in 1936 and adopted in various forms in Delaware, Florida, Hawaii, Idaho, Illinois, Indiana, Kansas, Ken-

tucky, Louisiana, Maine, Maryland, Minnesota, Missouri, Nebraska, New Jersey, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Washington, Wisconsin, Wyoming, and also in the Virgin Islands.

CHAPTER 1001—EVIDENCE—PUBLIC WRITINGS

93-1001-9. (10547) Constitution and statutes.

**References**

State ex rel. Peery v. District Court,  
145 M 287, 400 P 2d 648.



**93-1001-19. (10557) Copy of a foreign record—when evidence.****References**

In re Hosova's Estate, 143 M 75, 387 P 2d 305.

**93-1001-30. (10568) Manner of proving other official documents.****References**

Holtz v. Babcock, 143 M 341, 390 P 2d 801.

## CHAPTER 1101—EVIDENCE—PRIVATE WRITINGS

**93-1101-9. (10585) Original writing to be proved or accounted for.****Duplicate Original**

Carbon copy made at same time as original and with all formalities of the first sheet was a "duplicate original" and thereby properly admitted as original re-

tail installment contract without explanation of failure to produce the ribbon copy. Morris v. Langhausen, — M —, 472 P 2d 860.

## CHAPTER 1301—EVIDENCE—INDIRECT—INFERENCES AND PRESUMPTIONS

**93-1301-1. (10600) Indirect evidence classified.****Presumption Regarding Sentencing**

Presumption that first offender under Dangerous Drug Act is entitled to de-

layed imposition of sentence is kind of indirect evidence under this section. State v. Simtob, 154 M 286, 462 P 2d 873.

**93-1301-2. (10601) Inference defined.****Inference Distinguished from Suspicion**

An inference is to be distinguished from mere suspicion which is "the act or an instance of suspecting: imagination or apprehension of something wrong or hurt-

ful without proof or on slight evidence" (quoting Webster's New International Dictionary, 3rd ed. 1961). State v. Barick, 143 M 273, 389 P 2d 170.

**93-1301-3. (10602) Presumption defined.****Presumption Regarding Sentencing**

Presumption regarding sentencing under Dangerous Drug Act "is a deduction which the law expressly directs to be made from particular facts." State v. Simtob, 154 M 286, 462 P 2d 873.

**References**

State v. Barick, 143 M 273, 389 P 2d 170.

**93-1301-4. (10603) When an inference arises.****References**

State v. Barick, 143 M 273, 389 P 2d 170.

**93-1301-5. (10604) Presumptions may be converted, when.****Adverse Possession**

Although this section provides that presumptions may be overcome by other evidence, presumption of adverse possession was not overcome by evidence showing

acquiescence since acquiescence did not amount to permissive use or license. O'Connor v. Brodie, 153 M 129, 454 P 2d 920.

**93-1301-6. (10605) Specification of conclusive presumptions.****Deed from Mother to Son**

Conclusive presumption was not established in situation where court refused to impose constructive trust upon lands deeded to son by aged mother. *Bodine v. Bodine*, 149 M 29, 422 P 2d 650.

**Estoppel by Own Acts**

The doctrine of equitable estoppel set forth in subdivision 3 of this section is

not available as a defense when the essential elements of estoppel are lacking. *Belhumeur v. Dawson*, 229 F Supp 78, 86.

**Legitimacy**

Child is presumed legitimate if mother and father were married. *Spradlin v. United States*, 262 F Supp 502.

**93-1301-7. (10606) All other presumptions may be controverted.****Controversion of Presumption**

Presumption that first offender under Dangerous Drug Act is entitled to delayed imposition of sentence is disputable and may be controverted by other evidence but controls unless so contradicted. *State v. Simtob*, 154 M 286, 462 P 2d 873.

**Subdivision 4**

Deceased was presumed to have taken ordinary care of his own concerns, however plaintiff's evidence in wrongful death action showing deceased's failure to properly test empty gasoline tank before welding it which could very well have been cause of accident contradicted presumption. *Knowlton v. Sandaker*, 150 M 438, 436 P 2d 98.

**Subdivision 15**

Statutory presumption that "official duty has been regularly performed" was not overcome where defendant offered no evidence to show that any prospective juror was improperly excused from service and where judge testified that no prospective juror was excused from service without valid statutory excuse. *State v. Corliss*, 150 M 40, 430 P 2d 632.

On basis of statutory presumption and on basis of testimony of county employee that he had been ordered to maintain road by county commissioner who was also owner of the land, court concluded that then owner of land regarded road as public highway, in determining that public highway had been established by prescriptive use. *Kostbade v. Metier*, 150 M 139, 432 P 2d 382.

Findings and conclusions of district court are presumed correct and will not be reversed on appeal unless evidence, even though conflicting, preponderates against them. *Breen v. Industrial Accident Board*, 150 M 463, 436 P 2d 701.

Where petitioner claimed, fourteen years after his conviction, that his confession had been coerced and records of the proceedings against him were incomplete, but he had counsel to represent him on a second charge brought against him a few days later, presumption that petitioner had

voluntarily waived right to counsel on the first charge, besides the fact that he had pleaded guilty to it so that confession was not used against him, reinforced presumption that the proceedings had not violated his constitutional rights. *Frost v. State of Montana*, 249 F Supp 349.

**Subdivision 17**

Absent proof that evidence at hearing on entry of default judgment was insufficient or that an erroneous standard of damages was used, presumption that judgment was correct controlled on appeal, and aggrieved party could not attack evidence on which default judgment was based by introducing evidence in support of his proposed defense at hearing on his motion to vacate default judgment. *Uffleman v. Labbit*, 152 M 238, 448 P 2d 690.

Where petitioner claimed, fourteen years after his conviction, that his confession had been coerced and records of the proceedings against him were incomplete, fact that defendant had pleaded guilty to the crime charged so that confession was not used, and record stated he had waived right to counsel reinforced presumption under this subdivision that defendant's constitutional rights to counsel and against self-incrimination had not been violated. *Frost v. State of Montana*, 249 F Supp 349.

**Subdivision 18**

Presumption was not overcome where jury found in favor of defendant on his counterclaim filed in response to plaintiff's action for negligence from which may be inferred fact that issue of defendant's negligence was before the jury and that in not finding for plaintiff jury concluded that defendant was not negligent. *Ratcliff v. Murphy*, 150 M 31, 430 P 2d 627.

**Subdivision 24**

Presumption under this section that condemnee had received revised contract from state was strengthened by facts that condemnee received other documents en-

closed in the same envelope, the envelope was not returned to the state office and the condemnee was well-known in the vicinity. *Crissey v. State Highway Commission*, 147 M 374, 413 P 2d 308.

Testimony that notice was signed, placed in properly addressed envelope with sufficient postage thereon and mailed by certified mail was sufficient foundation for district court to admit original document into evidence and make finding that required notice was given. *Treasure State Industries, Inc. v. Leigland*, 151 M 288, 443 P 2d 22.

#### Subdivision 30

In view of statute recognizing common-law marriage, presumption that man and woman deporting themselves as husband and wife have entered into lawful contract of marriage is itself proof of marriage and is overcome as matter of law only when in light of proved facts reasonable men could no longer find in accordance with presumed fact. *Spradlin v. United States*, 262 F Supp 502.

Presumption of valid common-law marriage may be overcome if divorce records from the residences of alleged common-law husband reveal that he was not divorced from former wife or had not had former marriage annulled. *Spradlin v. United States*, 284 F Supp 763.

#### Subdivision 33

Findings and conclusions of district court are presumed correct and will not be reversed on appeal unless the evidence, even though conflicting, preponderates against them. *Breen v. Industrial Accident Board*, 150 M 463, 436 P 2d 701.

#### References

Subdivision 15: *Tooker v. State*, 147 M 207, 410 P 2d 923; *Wilson v. Brodie*, 148 M 235, 419 P 2d 306, 308.

Subdivision 16: *Wilson v. Brodie*, 148 M 235, 419 P 2d 306, 308.

Subdivision 17: *Tooker v. State*, 147 M 207, 410 P 2d 923; *Wilson v. Brodie*, 148 M 235, 419 P 2d 306, 308.

### CHAPTER 1401—EVIDENCE—INDISPENSABLE—UNWRITTEN AGREEMENTS—CONCLUSIVE—UNANSWERABLE

#### 93-1401-7. (10613) Agreement not in writing—when invalid.

##### Estoppel from Raising Statute

Promisor was estopped from raising statute of frauds as defense to action on oral agreement on basis of evidence of glaring inconsistencies in promisor's position. *Daley v. Daley*, 150 M 432, 436 P 2d 88.

##### Note or Memorandum

While the statute of frauds does not require that the memorandum be contained in a single document, where a memorandum did not name the parties to the alleged contract but referred to them as "we" and "our" and also tended to show that further negotiations were intended by the parties, it was not sufficient to satisfy the statute. *Anderson v. KFBB Broadcasting Corp.*, 143 M 423,

391 P 2d 2, distinguished in *Daley v. Daley*, 150 M 432, 436 P 2d 88.

##### Part Performance

Where employer had been awarded construction contract to be completed in 360 days and hired employee under oral agreement almost immediately thereafter, fact that contract was later amended resulting in an extension of time to correct construction error did not make it invalid under this section, and therefore did not affect employee's right to recover salary upon being fired, since extension of time was not contemplated in the original contract; fact that employee had worked seven weeks also removed contract from bar of statute under doctrine of part performance. *Fox v. Fifth West, Inc.*, 153 M 95, 454 P 2d 612.

### CHAPTER 1501—EVIDENCE—PRODUCTION OF—SUBPOENAS

#### 93-1501-1. (10616) Evidence to be produced, by whom.

##### Burden of Proof

Plaintiff had burden of proof that disputed range rights were based on land other than that purchased jointly by plaintiff and defendant and failure so to prove defeated plaintiff's claim that defendants were not entitled to one-half the

appraised value of the range rights. *Watson v. Barnard*, — M —, 469 P 2d 539.

##### Negligence

Where plaintiff's property was damaged by the dropping of fire retardant from airplanes and at the trial he failed to come



forth with sufficient evidence to show the lack of due care under the circumstances, the trial court properly nonsuited plaintiff upon defendant's motion. *Stocking v. Johnson Flying Service*, 143 M 61, 387 P 2d 312.

Where plaintiff alleged giving of notice which defendant denied, notice or lack thereof was put in issue and plaintiff had burden of proof. *Glacier General Assurance Co. v. State Farm Mutual Automobile Ins. Co.*, 150 M 452, 436 P 2d 533.

#### Partial Payment

Partial payment by special deposit was an affirmative defense which debtor had burden of proving in suit on note; that

burden of proof required that it be shown that payment was made on the particular obligation in controversy. *Baker Nat. Bank v. Lestar*, 153 M 45, 453 P 2d 774.

#### Res Ipsa Loquitur

*Res ipsa loquitur* does not relieve the plaintiff of the burden of proving actionable negligence, nor is it sufficient that he show that he was injured and that the instrumentality which caused his injury was in the control of the defendant; he must also show that the accident would not have occurred in the ordinary course of events if the defendant had exercised due care. *Stocking v. Johnson Flying Service*, 143 M 61, 387 P 2d 312.

### CHAPTER 1901—EVIDENCE—GENERAL RULES OF EXAMINATION

#### 93-1901-2. (10660) Witness not under examination may be excluded.

##### Ignorance of Order

Fact that witness did not hear court's order to absent himself from courtroom and, although present during part of another witness's testimony, was allowed to testify, was not reversible error in absence of showing that defendant was prejudiced. *State v. Love*, 151 M 190, 440 P 2d 275.

##### Officers As Witnesses

Statute does not apply to police officers called as state's witnesses, so that court properly denied defendant's motion to exclude police officers from courtroom before their time to testify. *State v. Fitzpatrick*, 149 M 400, 427 P 2d 300.

#### 93-1901-6. (10664) When witness may refresh memory from notes.

##### Pretrial Statement

Trial court did not abuse its discretion in permitting state's witness to testify after he had refreshed memory by referring to a statement he had made after shooting incident, in absence of prejudice to defendant and in light of fact that witness acknowledged that he made state-

ment after incident, that he recognized statement and that signature on statement was his. *State v. Gallagher*, 151 M 501, 445 P 2d 45.

##### References

*State v. Jones*, 143 M 155, 387 P 2d 913.

#### 93-1901-7. (10665) Cross-examination, as to what.

##### Prior Inconsistent Pleading

Complaint filed in previous action by father alleging boy's leg was 75% permanently disabled, signed under oath by

father, was properly admitted on cross-examination of father who had previously testified otherwise. *Tigh v. College Park Realty Co.*, 149 M 358, 427 P 2d 57.

#### 93-1901-11. (10668) How impeached.

##### References

*State v. Tagge*, 143 M 289, 388 P 2d

792; *State v. Tully*, 148 M 166, 418 P 2d 549, 550.

#### 93-1901-12. (10669) Impeachment by evidence of declarations.

##### Prior Inconsistent Pleading

Complaint filed in previous action by father alleging that boy's leg was 75% permanently disabled, signed by father under oath, was properly admitted for purpose of impeaching father who had previously testified otherwise. *Tigh v.*

*College Park Realty Co.*, 149 M 358, 427 P 2d 57.

##### References

*State v. Lagge*, 143 M 289, 388 P 2d 792.

**93-1901-14. (10671) Writing shown to witness may be inspected, etc.**

**Pretrial Statement of Defendant**

The trial court did not err in permitting state's witness to read entire statement of defendant wherein defendant was warned of constitutional rights since it was mate-

rial evidence that defendant's constitutional rights and waiver thereof were clearly and understandably enunciated to defendant. *State v. Lucero*, 151 M 531, 445 P 2d 731.

**CHAPTER 2001—EVIDENCE—EFFECT OF**

**93-2001-1. (10672) Jury judges of effect of evidence, etc.**

**Subdivision 3**

Conviction would not be reversed for giving of instruction based on statute but including words "except in so far as it may be corroborated by other and credible evidence in the case," in absence of specific showing of prejudice. *State v. Rollins*, 149 M 481, 428 P 2d 462.

of deceased partner against surviving partners to recover assets transferred by the deceased during his last illness, evidence that deceased had a half interest in the partnership cattle and failure of defendants to produce any of the partnership records at the trial in the lower court, sustained finding that heir of deceased had overcome the prima facie showing of one-third interest in the partnership cattle arising from the recording of the brand in name of three persons. *Marshall v. Minlschmidt*, 148 M 263, 419 P 2d 486, 491.

**References**

*State v. Lagge*, 143 M 289, 388 P 2d 792; *State v. Romero*, 146 M 77, 404 P 2d 500.

**Subdivisions 6 and 7**

In action by administrator of estate

**CHAPTER 2201—EVIDENCE—RULES IN PARTICULAR CASES**

**93-2201-1. (10680) An offer equivalent to tender.**

**References**

*Schultz v. Campbell*, 147 M 439, 413 P 2d 879.

**93-2201-3. (10682) Objections to tender must be specified.**

**Waiver of Tender**

Ordinarily, a check is not a tender, but it may be as effective as a tender of currency if there is no timely objection to

the form of tender, or if the objection is waived. *Schultz v. Campbell*, 147 M 439, 413 P 2d 879.

**CHAPTER 2501—QUESTIONS OF FACT AND LAW—DECISION OF**

**93-2501-2. (10699) Questions of law addressed to the court.**

**Interpretation of Lease**

Interpretation of lease of building was matter for court in dispute between lessor

and lessee. *Solich v. Hale*, 150 M 358, 435 P 2d 883.

**CHAPTER 2601—REVISED UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT (1968)**

Section 93-2601-41. Purposes.

93-2601-42. Definitions.

93-2601-43. Remedies additional to those now existing.

93-2601-44. Extent of duties of support.

93-2601-45. Interstate rendition.

93-2601-46. Conditions of interstate rendition.

93-2601-47. Choice of law.

93-2601-48. Remedies of state or political subdivision furnishing support.

93-2601-49. How duties of support enforced.

93-2601-50. Jurisdiction.

- 93-2601-51. Contents and filing of petition for support—venue.
- 93-2601-52. Officials to represent obligee.
- 93-2601-53. Petition for a minor.
- 93-2601-54. Duty of initiating court.
- 93-2601-55. Costs and fees.
- 93-2601-56. Jurisdiction by arrest.
- 93-2601-57. State information agency.
- 93-2601-58. Duty of the court and officials of this state as responding state.
- 93-2601-59. Further duties of court and officials in the responding state.
- 93-2601-60. Hearing and continuance.
- 93-2601-61. Immunity from criminal prosecution.
- 93-2601-62. Evidence of husband and wife.
- 93-2601-63. Rules of evidence.
- 93-2601-64. Order of support.
- 93-2601-65. Responding court to transmit copies to initiating court.
- 93-2601-66. Additional powers of responding court.
- 93-2601-67. Paternity.
- 93-2601-68. Additional duties of responding court.
- 93-2601-69. Additional duty of initiating court.
- 93-2601-70. Proceedings not to be stayed.
- 93-2601-71. Application of payments.
- 93-2601-72. Effect of participation in proceeding.
- 93-2601-73. Intrastate application.
- 93-2601-74. Appeals.
- 93-2601-75. Additional remedies.
- 93-2601-76. Registration.
- 93-2601-77. Registry of foreign support orders.
- 93-2601-78. Official to represent obligee.
- 93-2601-79. Registration procedure—notice.
- 93-2601-80. Effect of registration—enforcement procedure.
- 93-2601-81. Uniformity of interpretation.
- 93-2601-82. Short title.

### 93-2601-1 to 93-2601-40. Repealed.

#### Repeal

Sections 93-2601-1 to 93-2601-40 (Sec. 1, Ch. 208, L. 1961), known as the “Uni-

form Reciprocal Enforcement of Support Act,” were repealed by Sec. 44, Ch. 237, Laws 1969.

**93-2601-41. Purposes.** The purposes of this act are to improve and extend by reciprocal legislation the enforcement of duties of support.

**History:** En. Sec. 1, Ch. 237, L. 1969.

#### Compiler's Notes

Section 93-2601-41 to 93-2601-44 comprise Part I of this chapter, as enacted by Ch. 237, Laws 1969, entitled “General provisions.”

#### Title of Act

An act adopting the Uniform Reciprocal Enforcement of Support Act as revised by the National Conference of Commissioners on Uniform State Laws in 1968; pro-

viding additional remedies for enforcement of duties of support; providing for criminal enforcement by extradition; providing for civil enforcement where parties reside in different states or in different counties of Montana; providing for registration and enforcement of foreign support orders and support orders issued in different counties of Montana; providing for the resolution of paternity and visitation rights if contested, and for appeals; and repealing sections 93-2601-1 through 93-2601-40, R. C. M. 1947.

**93-2601-42. Definitions.** (a) “Court” means the district court of this state and when the context requires means the court of any other state as defined in a substantially similar reciprocal law.

(b) “Duty of support” means a duty of support whether imposed or imposable by law or by order, decree, or judgment of any court, whether interlocutory or final or whether incidental to an action for divorce, separation, separate maintenance, or otherwise and includes the duty to pay arrearages of support past due and unpaid.



(c) "Governor" includes any person performing the functions of governor or the executive authority of any state covered by this act.

(d) "Initiating state" means a state in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced. "Initiating court" means the court in which a proceeding is commenced.

(e) "Law" includes both common and statutory law.

(f) "Obligee" means a person including a state or political subdivision to whom a duty of support is owed or a person including a state or political subdivision that has commenced a proceeding for enforcement of an alleged duty of support or for registration of a support order. It is immaterial if the person to whom a duty of support is owed is a recipient of public assistance.

(g) "Obligor" means any person owing a duty of support or against whom a proceeding for the enforcement of a duty of support or registration of a support order is commenced.

(h) "Prosecuting attorney" means the public official in the appropriate place who has the duty to enforce criminal laws relating to the failure to provide for the support of any person.

(i) "Register" means to file in the registry of foreign support orders.

(j) "Registering court" means any court of this state in which a support order of a rendering state is registered.

(k) "Rendering state" means a state in which the court has issued a support order for which registration is sought or granted in the court of another state.

(l) "Responding state" means a state in which any responsive proceeding pursuant to the proceeding in the initiating state is commenced. "Responding court" means the court in which the responsive proceeding is commenced.

(m) "State" includes a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any foreign jurisdiction in which this or a substantially similar reciprocal law is in effect.

(n) "Support order" means any judgment, decree, or order of support in favor of an obligee whether temporary or final, or subject to modification, revocation, or remission, regardless of the kind of action or proceeding in which it is entered.

History: En Sec. 2, Ch. 237, L. 1969.

**93-2601-43. Remedies additional to those now existing.** The remedies herein provided are in addition to and not in substitution for any other remedies.

History: En. Sec. 3, Ch. 237, L. 1969.

**93-2601-44. Extent of duties of support.** Duties of support arising under the law of this state, when applicable under section 7 [93-2601-47], bind the obligor present in this state regardless of the presence or residence of the obligee.

History: En. Sec. 4, Ch. 237, L. 1969.

**93-2601-45. Interstate rendition.** The governor of this state may

(1) demand of the governor of another state the surrender of a person found in that state who is charged criminally in this state with failing to provide for the support of any person; or

(2) surrender on demand by the governor of another state a person found in this state who is charged criminally in that state with failing to provide for the support of any person. Provisions for extradition of criminals not inconsistent with this act apply to the demand even if the person whose surrender is demanded was not in the demanding state at the time of the commission of the crime and has not fled therefrom. The demand, the oath, and any proceedings for extradition pursuant to this section need not state or show that the person whose surrender is demanded has fled from justice or at the time of the commission of the crime was in the demanding state.

**History:** En. Sec. 5, Ch. 237, L. 1969. prise Part II of this chapter, as enacted by Ch. 237, Laws 1969, entitled "Criminal enforcement."

**Compiler's Notes**

Sections 93-2601-45 and 93-2601-46 com-

**93-2601-46. Conditions of interstate rendition.** (a) Before making the demand upon the governor of another state for the surrender of a person charged criminally in this state with failing to provide for the support of a person, the governor of this state may require any prosecuting attorney of this state to satisfy him that at least sixty (60) days prior thereto the obligee initiated proceedings for support under this act or that any proceeding would be of no avail.

(b) If, under a substantially similar act, the governor of another state makes a demand upon the governor of this state for the surrender of a person charged criminally in that state with failure to provide for the support of a person, the governor may require any prosecuting attorney to investigate the demand and to report to him whether proceedings for support have been initiated or would be effective. If it appears to the governor that a proceeding would be effective but has not been initiated he may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(c) If proceedings have been initiated and the person demanded has prevailed therein the governor may decline to honor the demand. If the obligee prevailed and the person demanded is subject to a support order, the governor may decline to honor the demand if the person demanded is complying with the support order.

**History:** En. Sec. 6, Ch. 237, L. 1969.

**93-2601-47. Choice of law.** Duties of support applicable under this act are those imposed under the laws of any state where the obligor was present for the period during which support is sought. The obligor is presumed to have been present in the responding state during the period for which support is sought until otherwise shown.

**History:** En. Sec. 7, Ch. 237, L. 1969. prise Part III of this chapter, as enacted by Ch. 237, Laws 1969, entitled "Civil enforcement."

**Compiler's Notes**

Sections 93-2601-47 to 93-2601-74 com-

**93-2601-48. Remedies of state or political subdivision furnishing support.** If a state or a political subdivision furnishes support to an individual obligee it has the same right to initiate a proceeding under this act as the individual obligee for the purpose of securing reimbursement for support furnished and of obtaining continuing support.

**History:** En. Sec. 8, Ch. 237, L. 1969.

**93-2601-49. How duties of support enforced.** All duties of support, including the duty to pay arrearages, are enforceable by a proceeding under this act including a proceeding for civil contempt. The defense that the parties are immune to suit because of their relationship as husband and wife or parent and child is not available to the obligor.

**History:** En. Sec. 9, Ch. 237, L. 1969.

**93-2601-50. Jurisdiction.** Jurisdiction of any proceeding under this act is vested in the district court.

**History:** En. Sec. 10, Ch. 237, L. 1969.

**93-2601-51. Contents and filing of petition for support—venue.** (a) The petition shall be verified and shall state the name and, so far as known to the obligee, the address and circumstances of the obligor and the persons for whom support is sought, and all other pertinent information. The obligee may include in or attach to the petition any information which may help in locating or identifying the obligor including a photograph of the obligor, a description of any distinguishing marks on his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, and his social security number.

(b) The petition may be filed in the appropriate court of any state in which the obligee resides. The court shall not decline or refuse to accept and forward the petition on the ground that it should be filed with some other court of this or any other state where there is pending another action for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody between the same parties or where another court has already issued a support order in some other proceeding and has retained jurisdiction for its enforcement.

**History:** En. Sec. 11, Ch. 237, L. 1969.

**93-2601-52. Officials to represent obligee.** If this state is acting as an initiating state the prosecuting attorney upon the request of the court, a state department of welfare, a county commissioner, or other local welfare officer, shall represent the obligee in any proceeding under this act. If the prosecuting attorney neglects or refuses to represent the obligee the attorney general may order him to comply with the request of the court or may undertake the representation.

**History:** En. Sec. 12, Ch. 237, L. 1969.

**93-2601-53. Petition for a minor.** A petition on behalf of a minor obligee may be executed and filed by a person having legal custody of the minor without appointment as guardian ad litem.

**History:** En. Sec. 13, Ch. 237, L. 1969.



**93-2601-54. Duty of initiating court.** If the initiating court finds that the petition sets forth facts from which it may be determined that the obligor owes a duty of support and that a court of the responding state may obtain jurisdiction of the obligor or his property it shall so certify and cause three (3) copies of the petition and its certificate and one (1) copy of this act to be sent to the responding court. Certification shall be in accordance with the requirements of the initiating state. If the name and address of the responding court is unknown and the responding state has an information agency comparable to that established in the initiating state it shall cause the copies to be sent to the state information agency or other proper official of the responding state, with a request that the agency or official forward them to the proper court and that the court of the responding state acknowledge their receipt to the initiating court.

**History:** En. Sec. 14, Ch. 237, L. 1969.

**93-2601-55. Costs and fees.** An initiating court shall not require payment of either a filing fee or other costs from the obligee but may request the responding court to collect fees and costs from the obligor. A responding court shall not require payment of a filing fee or other costs from the obligee but it may direct that all fees and costs requested by the initiating court and incurred in this state when acting as a responding state, including fees for filing of pleadings, service of process, seizure of property, stenographic or duplication service, or other service supplied to the obligor, be paid in whole or in part by the obligor or by the state or political subdivision thereof. These costs or fees do not have priority over amounts due to the obligee.

**History:** En. Sec. 15, Ch. 237, L. 1969.

**93-2601-56. Jurisdiction by arrest.** If the court of this state believes that the obligor may flee it may

(1) as an initiating court, request in its certificate that the responding court obtain the body of the obligor by appropriate process; or

(2) as a responding court, obtain the body of the obligor by appropriate process. Thereupon it may release him upon his own recognizance or upon his giving a bond in an amount set by the court to assure his appearance at the hearing.

**History:** En. Sec. 16, Ch. 237, L. 1969.

**93-2601-57. State information agency.** (a) The state department of public welfare is designated as the state information agency under this act, [and] it shall

(1) compile a list of the courts and their addresses in this state having jurisdiction under this act and transmit it to the state information agency of every other state which has adopted this or a substantially similar act. Upon the adjournment of each session of the legislature the agency shall distribute copies of any amendments to the act and a statement of their effective date to all other state information agencies;

(2) maintain a register of lists of courts received from other states and transmit copies thereof promptly to every court in this state having jurisdiction under this act; and

(3) forward to the court in this state which has jurisdiction over the obligor or his property petitions, certificates and copies of the act it receives from courts or information agencies of other states.

(b) If the state information agency does not know the location of the obligor or his property in the state and no state location service is available it shall use all means at its disposal to obtain this information, including the examination of official records in the state and other sources such as telephone directories, real property records, vital statistics records, police records, requests for the name and address from employers who are able or willing to co-operate, records of motor vehicle license offices, requests made to the tax offices both state and federal where such offices are able to co-operate, and requests made to the social security administration as permitted by the Social Security Act as amended.

(c) After the deposit of three (3) copies of the petition and certificate and one (1) copy of the act of the initiating state with the clerk of the appropriate court, if the state information agency knows or believes that the prosecuting attorney is not prosecuting the case diligently it shall inform the attorney general who may undertake the representation.

**History:** En. Sec. 17, Ch. 237, L. 1969.

The Social Security Act, as amended, referred to in subsection (b) of this section, is compiled in the United States Code as Tit. 42, sec. 1306.

**Compiler's Notes**

The compiler inserted the bracketed word "and" in subsection (a).

**93-2601-58. Duty of the court and officials of this state as responding state.** (a) After the responding court receives copies of the petition, certificate and act from the initiating court the clerk of the court shall docket the case and notify the prosecuting attorney of his action.

(b) The prosecuting attorney shall prosecute the case diligently. He shall take all action necessary in accordance with the laws of this state to enable the court to obtain jurisdiction over the obligor or his property and shall request the court to set a time and place for a hearing and give notice thereof to the obligor in accordance with law.

(c) If the prosecuting attorney neglects or refuses to represent the obligee the attorney general may order him to comply with the request of the court or may undertake the representation.

**History:** En. Sec. 18, Ch. 237, L. 1969.

**93-2601-59. Further duties of court and officials in the responding state.** (a) The prosecuting attorney on his own initiative shall use all means at his disposal to locate the obligor or his property, and if because of inaccuracies in the petition or otherwise the court cannot obtain jurisdiction the prosecuting attorney shall inform the court of what he has done and request the court to continue the case pending receipt of

more accurate information or an amended petition from the initiating court.

(b) If the obligor or his property is not found in the county, and the prosecuting attorney discovers that the obligor or his property may be found in another county of this state or in another state he shall so inform the court. Thereupon the clerk of the court shall forward the documents received from the court in the initiating state to a court in the other county or to a court in the other state or to the information agency or other proper official of the other state with a request that the documents be forwarded to the proper court. All powers and duties provided by this act apply to the recipient of the documents so forwarded. If the clerk of a court of this state forwards documents to another court he shall forthwith notify the initiating court.

(c) If the prosecuting attorney has no information as to the location of the obligor or his property he shall so inform the initiating court.

**History:** En. Sec. 19, Ch. 237, L. 1969.

**93-2601-60. Hearing and continuance.** If the obligee is not present at the hearing and the obligor denies owing the duty of support alleged in the petition or offers evidence constituting a defense the court, upon request of either party, continue the hearing to permit evidence relative to the duty to be adduced by either party by deposition or by appearing in person before the court. The court may designate the judge of the initiating court as a person before whom a deposition may be taken.

**History:** En. Sec. 20, Ch. 237, L. 1969.

**93-2601-61. Immunity from criminal prosecution.** If at the hearing the obligor is called for examination as an adverse party and he declines to answer upon the ground that his testimony may tend to incriminate him, the court may require him to answer, in which event he is immune from criminal prosecution with respect to matters revealed by his testimony, except for perjury committed in this testimony.

**History:** En. Sec. 21, Ch. 237, L. 1969.

**93-2601-62. Evidence of husband and wife.** Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this act. Husband and wife are competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage.

**History:** En. Sec. 22, Ch. 237, L. 1969.

**93-2601-63. Rules of evidence.** In any hearing for the civil enforcement of this act the court is governed by the rules of evidence applicable in a civil court action in the district court. If the action is based on a support order issued by another court a certified copy of the order shall be received as evidence of the duty of support, subject only to any defenses available to an obligor with respect to paternity (section 27 [93-2601-67]) or to a defendant in an action or a proceeding to enforce a foreign money judgment. The determination or enforcement of a duty



of support owed to one obligee is unaffected by any interference by another obligee with rights of custody or visitation granted by a court.

**History:** En. Sec. 23, Ch. 237, L. 1969.

**93-2601-64. Order of support.** If the responding court finds a duty of support it may order the obligor to furnish support or reimbursement therefor and subject the property of the obligor to the order. Support orders made pursuant to this act shall require that payments be made to the clerk of the court of the responding state. The court and prosecuting attorney of any county in which the obligor is present or has property have the same powers and duties to enforce the order as have those of the county in which it was first issued. If enforcement is impossible or cannot be completed in the county in which the order was issued, the prosecuting attorney shall send a certified copy of the order to the prosecuting attorney of any county in which it appears that proceedings to enforce the order would be effective. The prosecuting attorney to whom the certified copy of the order is forwarded shall proceed with enforcement and report the results of the proceedings to the court first issuing the order.

**History:** En. Sec. 24, Ch. 237, L. 1969.

**93-2601-65. Responding court to transmit copies to initiating court.** The responding court shall cause a copy of all support orders to be sent to the initiating court.

**History:** En. Sec. 25, Ch. 237, L. 1969.

**93-2601-66. Additional powers of responding court.** In addition to the foregoing powers a responding court may subject the obligor to any terms and conditions proper to assure compliance with its orders and in particular to:

- (1) require the obligor to furnish a cash deposit or a bond of a character and amount to assure payment of any amount due;
- (2) require the obligor to report personally and to make payments at specified intervals to the clerk; and
- (3) punish under the power of contempt the obligor who violates any order of the court.

**History:** En. Sec. 26, Ch. 237, L. 1969.

**93-2601-67. Paternity.** If the obligor asserts as a defense that he is not the father of the child for whom support is sought and it appears to the court that the defense is not frivolous, and if both of the parties are present at the hearing or the proof required in the case indicates that the presence of either or both of the parties is not necessary, the court may adjudicate the paternity issue. Otherwise the court may adjourn the hearing until the paternity issue has been adjudicated.

**History:** En. Sec. 27, Ch. 237, L. 1969.

**93-2601-68. Additional duties of responding court.** A responding court has the following duties which may be carried out through the clerk of the court:

(1) to transmit to the initiating court any payment made by the obligor pursuant to any order of the court or otherwise; and

(2) to furnish to the initiating court upon request a certified statement of all payments made by the obligor.

**History:** En. Sec. 28, Ch. 237, L. 1969.

**93-2601-69. Additional duty of initiating court.** An initiating court shall receive and disburse forthwith all payments made by the obligor or sent by the responding court. This duty may be carried out through the clerk of the court.

**History:** En. Sec. 29, Ch. 237, L. 1969.

**93-2601-70. Proceedings not to be stayed.** A responding court shall not stay the proceeding or refuse a hearing under this act because of any pending or prior action or proceeding for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody in this or any other state. The court shall hold a hearing and may issue a support order pendente lite. In aid thereof it may require the obligor to give a bond for the prompt prosecution of the pending proceeding. If the other action or proceeding is concluded before the hearing in the instant proceeding and the judgment therein provides for the support demanded in the petition being heard the court must conform its support order to the amount allowed in the other action or proceeding. Thereafter the court shall not stay enforcement of its support order because of the retention of jurisdiction for enforcement purposes by the court in the other action or proceeding.

**History:** En. Sec. 30, Ch. 237, L. 1969.

**93-2601-71. Application of payments.** A support order made by a court of this state pursuant to this act does not nullify and is not nullified by a support order made by a court of this state pursuant to any other law or by a support order made by a court of any other state pursuant to a substantially similar act or any other law, regardless of priority of issuance, unless otherwise specifically provided by the court. Amounts paid for a particular period pursuant to any support order made by the court of another state shall be credited against the amounts accruing or accrued for the same period under any support order made by the court of this state.

**History:** En. Sec. 31, Ch. 237, L. 1969.

**93-2601-72. Effect of participation in proceeding.** Participation in any proceeding under this act does not confer jurisdiction upon any court over any of the parties thereto in any other proceeding.

**History:** En. Sec. 32, Ch. 237, L. 1969.

**93-2601-73. Intrastate application.** This act applies if both the obligee and the obligor are in this state but in different counties. If the court of the county in which the petition is filed finds that the petition sets forth facts from which it may be determined that the obligor

owes a duty of support and finds that a court of another county in this state may obtain jurisdiction over the obligor or his property, the clerk of the court shall send the petition and a certification of the findings to the court of the county in which the obligor or his property is found. The clerk of the court of the county receiving these documents shall notify the prosecuting attorney of their receipt. The prosecuting attorney and the court in the county to which the copies are forwarded then shall have duties corresponding to those imposed upon them when acting for this state as a responding state.

**History:** En. Sec. 33, Ch. 237, L. 1969.

**93-2601-74. Appeals.** If the attorney general is of the opinion that a support order is erroneous and presents a question of law warranting an appeal in the public interest, he may

(a) perfect an appeal to the proper appellate court if the support order was issued by a court of this state, or

(b) if the support order was issued in another state, cause the appeal to be taken in the other state. In either case expenses of appeal may be paid on his order from funds appropriated for his office.

**History:** En. Sec. 34, Ch. 237, L. 1969.

**93-2601-75. Additional remedies.** If the duty of support is based on a foreign support order, the obligee has the additional remedies provided in the following sections.

**History:** En. Sec. 35, Ch. 237, L. 1969.

**Compiler's Notes**

Sections 93-2601-75 to 93-2601-82 com-

prise Part IV of this chapter, as enacted by Ch. 237, Laws 1969, entitled "Registration of foreign support orders."

**93-2601-76. Registration.** The obligee may register the foreign support order in a court of this state in the manner, with the effect, and for the purposes herein provided.

**History:** En. Sec. 36, Ch. 237, L. 1969.

**93-2601-77. Registry of foreign support orders.** The clerk of the court shall maintain a registry of foreign support orders in which he shall file foreign support orders.

**History:** En. Sec. 37, Ch. 237, L. 1969.

**93-2601-78. Official to represent obligee.** If this state is acting either as a rendering or a registering state the prosecuting attorney upon the request of the court, a state department of welfare, a county commissioner, or other local welfare official shall represent the obligee in proceeding under this part.

If the prosecuting attorney neglects or refuses to represent the obligee, the attorney general may order him to comply with the request of the court or may undertake the representation.

**History:** En. Sec. 38, Ch. 237, L. 1969.

**93-2601-79. Registration procedure — notice.** (a) An obligee seeking to register a foreign support order in a court of this state shall



transmit to the clerk of the court (1) three (3) certified copies of the order with all modifications thereof, (2) one (1) copy of the reciprocal enforcement of support act of the state in which the order was made, and (3) a statement verified and signed by the obligee, showing the post-office address of the obligee, the last known place of residence and post-office address of the obligor, the amount of support remaining unpaid, a description and the location of any property of the obligor available upon execution, and a list of the states in which the order is registered. Upon receipt of these documents the clerk of the court, without payment of a filing fee or other cost to the obligee, shall file them in the registry of foreign support orders. The filing constitutes registration under this act.

(b) Promptly upon registration the clerk of the court shall send by certified or registered mail to the obligor at the address given a notice of the registration with a copy of the registered support order and the post-office address of the obligee. He shall also docket the case and notify the prosecuting attorney of his action. The prosecuting attorney shall proceed diligently to enforce the order.

History: En. Sec. 39, Ch. 237, L. 1969.

**93-2601-80. Effect of registration — enforcement procedure.** (a) Upon registration the registered foreign support order shall be treated in the same manner as a support order issued by a court of this state. It has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a support order of this state and may be enforced and satisfied in like manner.

(b) The obligor has twenty (20) days after the mailing of notice of the registration in which to petition the court to vacate the registration or for other relief. If he does not so petition the registered support order is confirmed.

(c) At the hearing to enforce the registered support order the obligor may present only matters that would be available to him as defenses in an action to enforce a foreign money judgment. If he shows to the court that an appeal from the order is pending or will be taken or that a stay of execution has been granted the court shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired, or the order is vacated, upon satisfactory proof that the obligor has furnished security for payment of the support ordered as required by the rendering state. If he shows to the court any ground upon which enforcement of a support order of this state may be stayed the court shall stay enforcement of the order for an appropriate period if the obligor furnishes the same security for payment of the support ordered that is required for a support order of this state.

History: En. Sec. 40, Ch. 237, L. 1969.

**93-2601-81. Uniformity of interpretation.** This act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: En. Sec. 41, Ch. 237, L. 1969.

**93-2601-82. Short title.** This act may be cited as the Revised Uniform Reciprocal Enforcement of Support Act (1968).

**History:** En. Sec. 42, Ch. 237, L. 1969.

**Separability Clause**

Section 43 of Ch. 237, Laws 1969 read "If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect with-

out the invalid provision or application, and to this end the provisions of this act are severable."

**Repealing Clause**

Section 44 of Ch. 237, Laws 1969 read "Sections 93-2601-1 through 93-2601-40, R. C. M. 1947, are repealed."





## CHAPTER 2701

### MONTANA RULES OF CIVIL PROCEDURE

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#### II. COMMENCEMENT OF ACTION—SERVICE OF PROCESS, PLEADINGS, MOTIONS AND ORDERS

##### Rule

#### 4. Persons subject to jurisdiction—Process—Service.

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## **RULES OF CIVIL PROCEDURE**

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###### **References**

Spaberg v. Johnson, 143 M 500, 392 P  
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#### **II. COMMENCEMENT OF ACTION—SERVICE OF PROCESS, PLEADINGS, MOTIONS AND ORDERS**

- Rule 4. Persons subject to jurisdiction—Process—Service.  
5. Service and filing of pleadings and other papers.  
6. Time.

**Rule 4. Persons subject to jurisdiction—Process—Service.**

**A. DEFINITION OF PERSON.** As used in this rule, the word "person," whether or not a citizen or resident of this state and whether or not organized under the laws of this state, includes an individual whether operating in his own name or under a trade name; an individual's agent or personal representative; a corporation; a business trust; an estate; a trust; a partnership; an unincorporated association; and any two or more persons having a joint or common interest or any other legal or commercial entity.

**History:** En. Sec. 4, Ch. 13, L. 1961; amd. Sec. 1, Ch. 189, L. 1963; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965.

**Amendment**

The 1965 amendment restated this rule without change.

**B. JURISDICTION OF PERSONS.**

(1) **Subject to Jurisdiction.** All persons found within the state of Montana are subject to the jurisdiction of the courts of this state. In addition, any person is subject to the jurisdiction of the courts of this state as to any claim for relief arising from the doing personally, through an employee, or through an agent, of any of the following acts:

- (a) the transaction of any business within this state;
- (b) the commission of any act which results in accrual within this state of a tort action;
- (c) the ownership, use or possession of any property, or of any interest therein, situated within this state;
- (d) contracting to insure any person, property or risk located within this state at the time of contracting;
- (e) entering into a contract for services to be rendered or for materials to be furnished in this state by such person; or
- (f) acting as director, manager, trustee, or other officer of any corporation organized under the laws of, or having its principal place of business within this state, or as executor or administrator of any estate within this state.

(2) **Acquisition of Jurisdiction.** Jurisdiction may be acquired by our courts over any person through service of process as herein provided; or by the voluntary appearance in an action by any person either personally, or through an attorney, or through any other authorized officer, agent or employee.

**History:** En. Sec. 4, Ch. 13, L. 1961; amd. Sec. 1, Ch. 189, L. 1963; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965.

**Amendment**

The 1965 amendment restated this rule without apparent change.

**Nonresident Corporation Jurisdiction**

Montana court acquired in personam jurisdiction over nonresident corporation under portions of rule subjecting persons, who transact any business within Montana and persons entering into contracts for services to be rendered in Montana, to

jurisdiction of Montana notwithstanding corporation's contention that most of its Montana business and services it rendered and materials it furnished were within federal enclave known as Malmstrom Air Force Base. *Swanson Painting Co. v. Painters Local Union No. 260*, 391 F 2d 523.

In products liability suit instituted by resident, state properly exercised in personam jurisdiction over nonresident manufacturer under long-arm provision relating to commission of act resulting in accrual within state of tort action notwithstanding manufacturer's contention that action offended due process requirements of

"fundamental fairness" and "minimum contacts"; action was proper despite facts that defendant maintained no office in state, had no representative resident in or assigned to Montana, received orders from wholesale or retail outlets in Illinois, and had Montana business consisting of less than one-half of one per cent of its total business. *Bullard v. Rhodes Pharmacal Co.*, 263 F Supp 79.

Long-arm jurisdiction obtained over nonresident defendant for commission of act which results in accrual within state of tort action and for entering into contract for services to be rendered or for materials to be furnished in state did not violate due process requirements as embodied in "minimum contacts" test in view of evidence that defendant manufactured products for national and interstate market; that valve was ordered by specifications; that defendant knew at time of shipment that it would be used in Montana; that defendant knew that negligent manufacture might constitute a serious hazard; and that the explosion allegedly resulting from defective valve occurred in Montana. *Continental Oil Co. v. Atwood & Morrill Co.*, 265 F Supp 692, distinguished in *Yules v. General Motors Corp.*, 297 F Supp 674.

Exercise of long-arm jurisdiction over nonresident defendant for commission of act which results in accrual within state of tort action did not violate due process requirements and was within "minimum contacts" rule in view of evidence that nonresident manufacturer knew that cableway it manufactured would be used on construction site in state and that it sent several of its employees to state to inspect cableway. *Hartung v. Washington Iron Works*, 267 F Supp 408.

Montana properly exercised in personam jurisdiction over nonresident assignee of retail installment sales contract in suit for assignee's conversion of truck by repossessing it under provision relating to commission of any act which results in accrual within state of tort action; action was proper notwithstanding assignee's due process contentions in that his activities in Montana were insufficient in view of evidence that when contract was assigned, the assignee knew vehicle would be used throughout United States; that assignee did not object when truck was moved to Montana and thereafter accepted payments mailed from Montana;

that following accident in South Dakota, vehicle was removed to Montana at assignee's request; and that assignee had its agent, a wholly owned subsidiary, repossess truck in Montana and take necessary steps to obtain title to it. *Boyt v. Emmco Ins. Co.*, 271 F Supp 366.

### Retroactive Application

This rule applied to act of alleged malpractice occurring in Montana prior to effective date of this rule (Rule 86(a)) and doctor who had not resided in Montana since effective date of rule could be served properly with process, under Rule 4D(3), in California. *State ex rel. Johnson v. District Court of Fourth Judicial District*, 148 M 22, 417 P 2d 109, 111.

The giving of summons provisions of this rule, when the operative facts of the case to which the rule was applied had taken place prior to the effective date of the Montana Rules of Civil Procedure as set out in Rule 86 (a) was not a prohibited retroactive application of this rule within the meaning of section 12-201. *Weber v. Hydroponics, Inc.*, 226 F Supp 117, 118.

### Transacting Business

State had jurisdiction over person of nonresident defendant who placed purchase order directly with a Montana wholesaler once and paid by direct check to the wholesaler on several occasions, even though defendant had never personally met plaintiff nor been in the state. *Prentice Lumber Co. v. Spahn*, — M —, 474 P 2d 141.

### Voluntary Appearance

In action arising out of alleged unpaid bill owed by member of Indian tribe to non-Indian, whose place of business was in incorporated town located within boundaries of Indian reservation, trial court properly denied motion to dismiss for lack of jurisdiction since under this section defendant's appearance through counsel for change of venue was voluntary appearance by which court acquired jurisdiction. *State ex rel. Kennerly v. District Court*, 154 M 488, 466 P 2d 85.

### Law Review

Ganz, "Doing Business" in Illinois as a Basis of Jurisdiction Over Nonresidents—Due Process and Contracts," Vol. 1, No. 4 *Illinois Continuing Legal Education* 75 (October 1963).

## C. PROCESS.

(1) **Summons—Issuance.** Upon the filing of the complaint, the clerk shall forthwith issue a summons, and shall deliver the summons either to the sheriff of the county in which the action is filed, or to the person who



is to serve it, or upon request, to the attorney for said party who shall thereafter be responsible to see that the summons is served in the manner prescribed by these rules. Upon request, separate or additional summons shall issue against any parties designated in the original action, or against any additional parties who may be brought into the action.

(2) **Summons—Form.** The summons shall be signed by the clerk, be under the seal of the court, contain the name of the court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which these rules require the defendant to appear and defend, and shall notify him that in case of his failure to do so judgment by default will be rendered against him for the relief demanded in the complaint. In an action brought to quiet title to real estate, there shall be added to the foregoing, the following: "This action is brought for the purpose of quieting title to land situated in \_\_\_\_\_ County, Montana, and described as follows: (Here insert descriptions of land.)." For exceptions to this form of summons see 4D(4) "Other Service," set forth hereinafter.

**History:** En. Sec. 4, Ch. 13, L. 1961; amd. Sec. 1, Ch. 189, L. 1963; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

**Advisory Committee's Note to September 29, 1967 Amendment**

Source: None.

This amendment, together with the change in 4D(4), is intended to make it clear that there is no conflict between the requirements of the rules with respect to summons for publication and the requirements of section 93-6228, and that section 93-6228 governs actions to establish title to property granted to heirs of deceased entryman but has no application to other actions.

#### Amendments

The 1965 amendment made minor changes in the caption to paragraph (2) and in references to R. C. M. 1947.

The amendment of September 29, 1967 substituted the last sentence in subdivision (2) for former sentence requiring compliance with sections 84-4165 and 93-6228 and with provisions of Rule 4D(5) (h); and made minor changes in phraseology.

### D. SERVICE.

(1) **By Whom Served.** Service of all process shall be made by a sheriff of the county where the party to be served is found, by his deputy, by a constable authorized by law, or by any other person over the age of 21 not a party to the action, except that a subpoena may be served as provided in Rule 45.

(2) **Personal Service Within the State.** The summons and complaint shall be served together, unless two or more defendants are residents of the same county, in which case a copy of the complaint need only be served upon one of such defendants. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made as follows:

(a) Upon an individual other than an infant or an incompetent person, by delivering a copy of the summons and of the complaint to him personally or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process, provided that if the agent is one designated by

statute to receive service, such further notice as the statute requires shall be given.

(b) Upon a minor over the age of 14 years, by delivering a copy of the summons and complaint to him personally, and by leaving a copy thereof at his dwelling house or usual place of abode with some adult of suitable discretion then residing therein, or by delivering a copy of the summons and complaint to an agent authorized by appointment or by law to receive service of process.

(c) Upon a minor under the age of 14 years, by delivering a copy of the summons and complaint to his guardian, if he has one within the state, and if not, then to his father or mother or other person or agency having his care or control, or with whom he resides, or if service cannot be made upon any of them, then as provided by order of the court.

(d) Upon a person who has been adjudged of unsound mind by a court of this state, or for whom a guardian has been appointed in this state by reason of incompetency, by delivering a copy of the summons and complaint to his guardian, if there be a guardian residing in this state appointed and acting under the laws of this state. If there be no such guardian, the court shall appoint a guardian ad litem for the incompetent person, with or without personal service on the incompetent, as the court may direct. When a party is alleged to be of unsound mind, but has not been so adjudged by a court of this state, such party may be brought into court by service of process personally upon him. The court may also stay any action pending against a person on learning that such person is of unsound mind.

(e) Upon a domestic corporation, partnership or other unincorporated association, or upon a foreign corporation, partnership or other unincorporated association, established by the laws of any other state or country, and having a place of business within this state or doing business herein either permanently or temporarily, or which was doing business herein either permanently, or temporarily at the time the claim for relief accrued: (i) by delivering a copy of the summons and complaint to an officer, director, superintendent or managing or general agent, or partner, or associate for such corporation, partnership, or association; or by leaving such copies at the office or place of business of the corporation, partnership, or association within the state with the person in charge of such office; or (ii) by delivering a copy of the summons and complaint to any agent or attorney in fact authorized by appointment or by statute to receive or accept service on behalf of the corporation, partnership, or association, provided that if the agent or attorney in fact is one designated by statute to receive service, such further notice as the statute requires shall also be given; or (iii) if the sheriff shall make return that no person upon whom service may be made can be found in the county, then service may be made by leaving a copy of the summons and complaint at any office of the corporation, partnership, or unincorporated association within this state with the person in charge of such office; or (iv) if the suit is against a corporation whose charter or

right to do business in the state has expired or been forfeited, by delivering a copy thereof to any one of the persons who have become trustees for the corporation and its stockholders or members.

(f) When a claim for relief is pending in any court of this state against a corporation organized under the laws of this state, or against a corporation organized under the laws of any other state or country, that has filed a copy of its charter in the office of the secretary of state of Montana and qualified to do business in Montana; or against a corporation organized under the laws of any other state or country which is subject to the jurisdiction of the courts of this state under the provisions of Rule 4B above, even though such corporation has never qualified to do business in Montana; or against a national banking corporation which, through insolvency or lapse of charter, has ceased to do business in Montana; and none of the persons designated in D(2)(e) immediately above can with the exercise of reasonable diligence be found within Montana, the party causing summons to be issued shall exercise reasonable diligence to ascertain the last known address of any such person. Upon the filing with the clerk of court in which the claim for relief is pending of an affidavit reciting that none of the persons designated in D(2)(e) can after due diligence be found within Montana upon whom service of process can be made, and reciting the last known address of any such person, or reciting that after the exercise of reasonable diligence no such address for any such person could be found, and there has also been deposited with the said clerk the sum of \$5.00 to be paid to the secretary of state as a fee for each of said defendants for whom the secretary of state is to receive said service, then the clerk of court shall issue an order directing process to be served upon the secretary of state of the state of Montana or, in his absence from his office, upon the deputy secretary of state of the state of Montana. Such affidavit shall be sufficient evidence of the diligence of inquiry made by affiant, if the affidavit recites that diligent inquiry was made, and the affidavit need not detail the facts constituting such inquiry. Whenever service is also to be made through publication as provided in 4D(5), or upon other persons as provided in 4D(6), the affidavit herein required may be combined in the same instrument with the affidavit required under 4D(5)(c) and 4D(6). The said clerk of court shall then mail to the secretary of state the original summons, one copy of the summons and one copy of the affidavit for the files of the secretary of state, one copy of the summons attached to a copy of the complaint for each of the defendants to be served by service upon the secretary of state, and the fee for service, to the office of the secretary of state. The secretary of state shall mail copy of the summons and complaint by certified or registered mail with a return receipt requested to the last known address of any of the persons designated in D(2)(e) above, if known, or, if none such is known and it is a corporation not organized in Montana, to the secretary of state of the state in which such corporation was originally incorporated, if known; and the secretary of



state shall make his return as hereinafter provided under Rule 4D(6). When service is so made, it shall be deemed personal service on such corporation, and the said secretary of state, or his deputy when the secretary is absent from his office, is hereby appointed agent of such corporation for service of process in cases hereinbefore mentioned. In any action where due diligence has been exercised to locate and serve any of the persons designated in D(2)(e) above, service shall be deemed complete upon said corporation regardless of the receipt of any return receipt or advice of refusal of the addressee to receive the process mailed, as is hereinafter required by 4D(6); provided, however, that except in those actions where any of the persons designated in D(2)(e) above have been located and served personally as hereinabove provided, then service by publication shall also be made as provided hereafter in 4D(5)(d) and 4D(5)(h); the first publication must be made within sixty days from the date the original summons is mailed to the secretary of state as herein provided, and if said first publication is not so made, the action shall be deemed dismissed as to any such party intended to be served by such publication; and service shall be complete upon the date of the last publication of summons.

When service of process is made as herein provided, and there is no appearance thereafter made by any attorney for such corporation, service of all other notices required by law to be served in such action may be served upon the secretary of state.

(g) Upon a city, village, town, school district, county, or public agency or board of any such public bodies, by delivering a copy of the summons and complaint to any commissioner, trustee, board member, mayor or head of the legislative department thereof.

(h) Upon the state, or any state board or state agency, by delivering a copy of the summons and complaint to the governor, or to any member of such state board or state agency, and also by delivering an additional copy of the summons and complaint to the attorney general.

(i) Upon an estate by delivering a copy of the summons and complaint to the personal representative thereof; upon a trust by delivering a copy of the summons and complaint to any trustee thereof.

(3) Personal Service Outside the State. Where service upon any person cannot, with due diligence, be made personally within this state, service of summons and complaint may be made by service outside this state in the manner provided for service within this state, with the same force and effect as though service had been made within this state. Where service by publication is permitted as hereinafter provided, personal service of a summons and complaint upon the defendant out of the state shall be equivalent to and shall dispense with the procedures and the publication and mailing provided for hereafter in 4(5)(c), 4(5)(d) and 4(5)(e) of this rule.

(4) Other Service. All process in any form of action shall be served in the manner specified in this rule with the exception that whenever a statute of this state or an order of the court or a citation by the court made pursuant thereto provides for the service of a notice or of an

order or of a citation in lieu of summons upon any person, service shall be made under the circumstances and in the manner prescribed by the statute or order or citation; and with the further exception that all persons are required to comply with the provisions hereafter prescribed in D(5)(h), and with the provisions of sections 40-2819, 40-3405, 40-3406, 40-3423, 40-3424, 93-6228, 93-6229, 93-6230, and 93-6232, R. C. M. 1947, when the action pertains to the provisions of such sections.

(5) Service by Publication — When Permitted — Effect — Manner — Proof.

(a) When Permitted. A defendant, whether known or unknown, who has not been served under the foregoing subsections of this rule can be served by publication in the following situations only:

(i) When the subject of the action is real or personal property in this state and the defendant has or claims a lien or interest, actual or contingent, therein, or the relief demanded consists wholly or partially in excluding the defendant from any interest therein. This subsection shall apply whether any such defendant is known or unknown.

(ii) When the action is to foreclose, redeem from or satisfy a mortgage, claim or lien upon real or personal property within this state.

(iii) When the action is for divorce or for annulment of marriage of a resident of this state or for modification of a decree of divorce granted by a court of this state.

(iv) When the defendant has property within this state which has been attached or has a debtor within this state, who has been garnished. Jurisdiction under this subsection may be independent of or supplementary to jurisdiction acquired under subsections (5)(a)(i), (5)(a)(ii), and (5)(a)(iii) herein.

(b) Effect of Service by Publication. When a defendant, whether known or unknown, has been served by publication as provided in this rule, any court of this state having jurisdiction may render a decree which will adjudicate any interest of such defendant in the status, property, or thing acted upon, but it may not bind the defendant personally to the personal jurisdiction of the court unless some ground for the exercise of personal jurisdiction exists.

(c) Filing of Pleading and Affidavit for Service by Publication; and Order for Publication. Before service of the summons by publication is authorized in any case, there shall be filed with the clerk in the district court of the county in which the action is commenced (i) a pleading setting forth a claim in favor of the plaintiff and against the defendant in one of the situations defined in (5)(a) above; and (ii) in situations defined in (5)(a)(i), (5)(a)(ii), (5)(a)(iii), upon return of the summons showing the failure to find any defendant designated in the complaint, an affidavit stating that such defendant resides out of the state, or has departed from the state, or cannot, after due diligence, be found within the state, or conceals himself to avoid the service of summons; or, if the defendant is a domestic or foreign corporation, that none of the persons designated in D(2)(e)

above can, after due diligence, be found within the state; or, if the defendant is an unknown claimant, by showing that he has made diligent search and inquiry for all persons who claim, or might claim any right, title, estate, or interest in, or lien, or encumbrance upon, such property, or any thereof, adverse to plaintiff's ownership, or any cloud upon plaintiff's title thereto, whether such claim or possible claim be present or contingent, including any right of dower, inchoate or accrued, and that he has specifically named as defendants in such action all such persons whose names can be ascertained; such affidavit shall be sufficient evidence of the diligence of any inquiry made by the affiant, if the affidavit recite the fact that diligent inquiry was made, and it need not detail the facts constituting such inquiry, and if desired, it may be combined in one instrument with the affidavit required under 4D(2)(f), or 4D(6); and (iii) in the situation defined in (5)(a)(iv) above, there must be first presented to the court proof that a valid attachment or garnishment has been effected. Upon complying herewith, the plaintiff may obtain an order for the service of summons to be made upon the defendants by publication, which order may be issued by either the judge or the clerk of court.

(d) Number of Publications. Service of the summons by publication may be made by publishing the same three times, once each week for three successive weeks, in a newspaper published in the county in which the action is pending, if a newspaper is published in such county, and if no newspaper is published in such county then in a newspaper published in an adjoining county and having a general circulation therein.

(e) Mailing Summons and Complaint. A copy of the summons for publication and complaint, at any time after the filing of the affidavit for publication and not later than 10 days after the first publication of the summons, shall be deposited in some post office in this state, postage prepaid, and directed to the defendant at his place of residence unless the affidavit for publication states that the residence of the defendant is unknown. If the defendant is a corporation, and personal service cannot with due diligence be effected within Montana on any of the persons designated in D(2)(e) above, then service may be completed on said corporation by service upon the secretary of state in the manner, and following the procedure outlined in D(2)(f) above.

(f) Time When First Publication or Service Outside State Must Be Made. The first publication of summons, or personal service of the summons and complaint upon the defendant out of the state, must be made within 60 days after the filing of the affidavit for publication. If not so made, the action shall be deemed dismissed as to any party intended to be served by such publication.

(g) When Service by Publication or Outside State Complete. Service by publication is complete on the date of the last publication of the summons, or in case of personal service of the summons and complaint upon the defendant out of the state, on the date of such service.



(h) Additional Information to Be Published. In addition to the form of summons prescribed above in "C. Process, (2) Summons—Form," the published summons shall state in general terms the nature of the action, and in all cases where publication of summons is made in an action in which the title to, or any interest in or lien upon real property is involved, or affected, or brought into question, the publication shall also contain a description of the real property involved, affected or brought into question thereby, and a statement of the object of the action.

(6) (a) Service on Secretary of State. Whenever service is to be made upon certain corporations as provided hereinabove in D(2) (f) and D(5)(e), the requirements of said D(2)(f) must be complied with. In all other cases, unless otherwise provided by statute, whenever the secretary of state of the state of Montana has been appointed, or is deemed by law to have been appointed, as the agent to receive service of process for any person who cannot with due diligence be found or served personally within Montana, the party, or his attorney, shall make an affidavit stating the facts showing that the secretary of state is such agent, and stating the residence and last known post-office address of the person to be served, and shall file such affidavit with the clerk of court in which such claim for relief is pending, accompanied by sufficient copies of the affidavit, summons and complaint for service upon the secretary of state, and there has also been deposited with the clerk of the court in which such claim for relief is pending the sum of five dollars to be paid to the secretary of state as a fee for each of said defendants for whom the secretary of state is to receive such service; then the clerk shall forward the original summons, one copy of the summons and one copy of the affidavit for the files of the secretary of state, and one copy of the summons attached to copy of the complaint for each of the defendants to be served by service upon the secretary of state, and the fee, to the office of the secretary of state.

Such service on the secretary of state shall be sufficient personal service upon the person to be served, provided that notice of such service and a copy of the summons and complaint are forthwith sent by registered or certified mail by the secretary of state or his deputy to the party to be served at his last known address, marked "Deliver to Addressee Only" and "Return Receipt Requested," and provided further that such return receipt shall be received by the secretary of state purporting to have been signed by said addressee, or the secretary of state shall be advised by the postal authority that delivery of said registered or certified mail was refused by said addressee, except in those cases where compliance is excused under the provisions of D(2)(f) above. The date upon which the secretary of state receives said return receipt, or receives advice by the postal authority that delivery of said registered or certified mail was refused by the addressee, shall be deemed the date of service.

As an alternative to sending the summons and complaint by registered or certified mail, as herein provided, the secretary of state,

or his deputy, may cause copy of the summons and complaint to be served by any qualified law enforcement officer, in accord with the procedure set out in D(1), (2) or (3) of this rule.

The secretary of state, or his deputy, shall make an original and two copies of an affidavit reciting: (1) the fact of service upon him by the clerk of court, including the day, and hour of such service; (2) the fact of his mailing a copy of the summons and complaint and notice to the defendant, including the day and hour thereof, except in those cases where he is relieved from doing so under the provisions of D(2)(f) in which cases his affidavit shall so recite; and (3) the fact of his receipt of a return from the postal department including the date, and hour thereof, and attaching to his affidavit a copy of such return. The secretary of state, or his deputy, shall then transmit the original summons, and his original affidavit along with copy of his notice to the defendant where such notice was required, to the clerk of court in which the claim for relief is pending, and it shall be filed in the claim for relief by said clerk of court; and the secretary of state shall also transmit to the attorney for the plaintiff copy of the affidavit of the secretary of state along with copy of the notice to the defendant where such notice was required. The secretary of state shall keep on file in his office a copy of the summons, a copy of the affidavit served on him by the clerk of court, and a copy of the affidavit executed and issued by the secretary of state.

(b) [Continuance to Allow Defense.] In any of the cases provided for in Rule 4D(2)(f) above, or provided for hereinabove in 4D(6)(a), the court in which the claim for relief is pending may order such continuance as may be necessary to afford reasonable opportunity to defend the action.

(7) Amendment. At any time, in its discretion, and upon such notice and terms as it deems just, the court may allow any process or proof of service thereof to be amended unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

(8) Proof of Service. Proof of the service of the summons and of the complaint or notice, if any, accompanying the same must be as follows:

(a) If served by the sheriff or other officer, his certificate thereof;

(b) If by any other person, his affidavit thereof;

(c) In case of publication an affidavit of the publisher and an affidavit of the deposit of a copy of the summons and complaint in the post office as required by law, if the same shall have been deposited;  
**or**

(d) The written admission of the defendant showing the date and place of **service**.

The certificate or affidavit of service mentioned in this subdivision must state the time, date, place, and manner of service.

(9) Contents of Affidavit of Service. Whenever a process, pleading, order of court, or other paper is served personally by a person other

than the sheriff or person designated by law, the affidavit of service when made, shall state that the person so serving is of legal age, and the date and place of making the service. It also shall state that the person making such service knew the person served to be the person named in the papers served and the person intended to be served.

(10) Procedure Where Only Part of Defendants Are Served. If the summons is served on one or more, but not all, of the defendants, the plaintiff may proceed to trial and judgment against the defendant or defendants on whom the process is served, and may at any time thereafter have a summons against the defendant not served with the first process to cause him to appear in said court to show cause why he should not be made a party to such judgment. Upon such defendant being duly served with such process, the court shall hear and determine the matter in the same manner as if such defendant had been originally brought into court, and such defendant shall also be allowed the benefit of any payment or satisfaction which may have been made on the judgment before recovered.

**History:** En. Sec. 4, Ch. 13, L. 1961; amd. Sec. 1, Ch. 189, L. 1963; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965; amd. Sup. Ct. Ord. 10750, Sept. 7, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750, Nov. 28, 1966, eff. Jan. 1, 1967; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

#### Amendments

The 1965 amendment rewrote paragraphs (e) and (f) of subdivision (2), for previous text of which see parent volume; substituted "if the defendant is a domestic or foreign corporation, that none of the persons designated in D(2)(e) above can" for "that the defendant, if a domestic or foreign corporation, has no agent for the service of process, nor managing nor business agent, cashier, secretary, or other officer who can" in clause (ii) of paragraph (5)(c); inserted "and if desired, it may be combined in one instrument with the affidavit required under 4 D(2)(f), or 4 D(6)" at the end of clause (ii) of paragraph (5)(c); substituted the second sentence of paragraph (5)(e) for two sentences applying only to foreign corporations, for text of which see parent volume; substituted "any party intended to be served by such publication" for "any person not served within said 60-day period" at the end of paragraph (5)(f); completely rewrote subdivision (6), for previous text of which see parent volume; inserted "by" in clause (8)(b); and made minor style changes in paragraphs (3), (4), and (5)(a)(iv).

The amendment of September 7, 1965, in subdivision (2), deleted "or attorney" in clause (i) of paragraph (e) and, in paragraph (f), substituted "court of this state" for "court in this state" in the first

clause of the first sentence, substituted "subject to the jurisdiction \* \* \* Rule 4B above" for "actually doing business within Montana or was actually doing business in Montana at the time the claim for relief arose," in the second clause of the first sentence, and substituted "persons" for "person" in the fourth sentence.

The amendment of November 28, 1966 added paragraph (i) of subdivision (2); in the second sentence of subdivision (3), deleted "of summons" after "Where service," deleted "made after the filing of the required complaint and required affidavit for publication" after "out of the state," inserted the reference to 4(5)(c), and made other changes in phraseology; and, in clause (8)(d), substituted "date" for "time."

The amendment of September 29, 1967, in subdivision (4), inserted "with the provisions hereafter prescribed in D(5)(h), and" and "93-6228."

#### Commission Note to 1965 Amendment

Because of criticism from several members of the Bar, as well as the office of the Secretary of State, changes have been made in the provisions of Rule 4. In addition, some housekeeping changes have also been made.

We have inserted at the points where changes or additions have been made the new language italicized [not italicized herein; see Amendment note above].

Several members of the Bar have called the attention of the Rules Committee to the fact that particularly in quiet title actions, where defunct corporations were involved, and where none of the persons could be found with due diligence upon whom service could be completed that would be binding on the defunct corpora-



tion, that effective service could not be obtained by reason of the requirement of a return of a registered receipt showing delivery of the summons and complaint to the defunct corporation. We have now corrected that defect. In doing so, we have also brought within the framework of Rule 4 the provisions of R. C. M. 1947, Sections 93-3008, 93-3011, and 93-3012, which will be superseded. In addition, as long as we are changing Rule 4, we have now specified and delineated the same persons to be served whether or not the defendants are domestic or foreign corporations, or domestic or foreign partnerships or other unincorporated associations. It will be recalled that when Rule 4 was first promulgated, and in an effort not to bring about any changes in our prior practice, the old, separate, segregated statutes pertaining to domestic and foreign corporations were segregated in Rule 4. There is no reason, however, why the same persons should not be delineated for both domestic and foreign corporations, and we have now done so in this new writing of Rule 4.

In lieu of the requirement of a return receipt signed on behalf of the corporations, which in many instances cannot be accomplished, as pointed out in the criticism from the Bar, we have now added a requirement for publication of summons against such corporation where none of the persons can be found with due diligence upon whom personal service can be completed. (See the new D(2)(f). In so providing, however, we have now spelled out that the same procedure for publications shall be followed for serving corporations personally in in personam actions, as we have provided for serving such corporations by publication in in rem actions (see D(5)(e)).

Accordingly, we have made an effort to combine and streamline service on corporations by designating the same individual persons who can be served, whether the corporations are domestic or foreign, and providing the same procedure of publication where such persons cannot be found with due diligence, whether or not the defendants are domestic and foreign, and we have eliminated the necessity of the return of a signed registry receipt objected to so heavily by the Bar.

A second important change in the rule is specific authorization for an attorney for the plaintiff to incorporate within the framework of one single affidavit all the material necessary for serving defunct corporations personally, for serving by way of publication, and for serving the secretary of state.

Changes have also been made in those portions of the rule providing for service on the secretary of state. We have eliminated the necessity of the intermediate

step of having summons and complaint go through the hands of the sheriff in Lewis and Clark County; we have cut down on the papers that must be kept on file by the secretary of state, particularly eliminating the necessity of his keeping a copy of the complaint; and we have provided a requirement that the secretary of state shall now serve upon the attorney for the plaintiff the factual information showing what was done by the secretary of state in effecting service, and the date when it was accomplished.

There are other minor housekeeping changes in the rule, and wherever there is any change, omission, alteration, or new language, reference to it is contained at the points where such is accomplished.

#### **Commission Note to September 7, 1965 Amendment**

The amendments to Rule 4D(2) as to (e) is to remove an "attorney" because of doubt as to who would be such within the meaning of the Rule. As to (f) to avoid possible conflict of the provisions of this subdivision and those of 4B.

The other amendments [Rules 50(b), 52(b), 59(e) and 60(c)] will expedite the hearing and determination of the motions involved, and provide a time after submission within which the motions are deemed denied if the court fails to decide them.

#### **Advisory Committee's Note to November 28, 1966 Amendment**

Rule 4D(2)(i): The purpose of the amendment is to remove doubts as to the manner of suing an estate and a trust, resultant from the inclusion of "an estate" and "a trust" in the definition of a person in 4A.

Rule 4D(3): To make it clear that the personal service outside this state dispenses with the necessity for following the procedure for service by publication prescribed by 4D(5). The provision for service of "a summons and complaint" permits personal service of either the original summons or the summons for publication, together with the complaint. As provided in 4D(5)(g), in case of personal service outside of this state service is complete on the date of such service.

Rule 4D(8)(d): To make it clear that it is the date and not the hour of day which should be shown in the admission of service. The time requirement in certificates or affidavits of personal service is considered desirable and no change in the last paragraph of 4D(8) is recommended.

#### **Advisory Committee's Note to September 29, 1967 Amendment**

Source: None.

See Committee's Note to 42C(2).

**Retroactive Application**

Rule 4B(1), applied to act of alleged malpractice occurring in Montana prior to the effective date of this rule (Rule 86(a)) and doctor who had not resided in Mon-

tana since effective date of rule could properly be served with process in California under this rule. *State ex rel. Johnson v. District Court of Fourth Judicial District*, 148 M 22, 417 P 2d 109, 111.

**DECISIONS UNDER FORMER LAW****Paragraph (2)**

The doctrine of ostensible agency under section 2-205 has no application in determining whether service of process has been legally made on a "managing or general agent" within the meaning of this rule. *Kraus v. Treasure Belt Min. Co.*, 146 M 432, 408 P 2d 151.

**Paragraph (5)**

Jurisdiction of the court attaches at the time of personal service of the complaint and summons, so that a prematurely en-

tered default judgment is voidable and not void. *Sowerwine v. Sowerwine*, 145 M 81, 399 P 2d 233.

**Paragraph (8)**

Appearance and waiver executed by a foreign corporation, not qualified to do business in Montana, acknowledging receipt of amended complaint filed by plaintiff sufficiently complied with former section 93-3018. *Greene Plumbing & Heating Co. v. Morris*, 144 M 234, 395 P 2d 252, 255.

**Rule 5. Service and filing of pleadings and other papers.**

(a) **SERVICE—WHEN REQUIRED.** Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every written motion other than one which may be heard *ex parte*, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

**History:** En. Sec. 5, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

**Amendments**

The amendment of September 29, 1967 inserted "Except as otherwise provided in these rules" at the beginning of the first sentence; deleted "affected thereby, but" at the end of the first sentence, making the remainder of the original sentence into the second sentence.

**Advisory Committee's Note to September 29, 1967 Amendment**

Source: Fed. R. Civ. P. 5(a), as amended 1963.

Explanation of change: The words "affected thereby" stricken out by the amendment, introduced a problem of interpretation. The amendment eliminates this difficulty and promotes full exchange of information among the parties by requiring service of papers on all the parties to the action, except as otherwise provided in the rules.

**Rule 6. Time.****(a) COMPUTATION.****Statute of Limitations**

Complaint filed three years and one day after act in suit governed by three-year statute of limitations was timely where

last day of three-year period was Sunday. *Grey v. Silver Bow County*, 149 M 213, 425 P 2d 819.

(b) **ENLARGEMENT.** When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon

motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 50(b), 52(b), 59(b), (d), (e) and (f), and 60(b), except to the extent and under the conditions stated in them.

**History:** En. Sec. 6, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969.

#### Amendments

The amendment of May 21, 1969 inserted the reference to Rule 50(f).

**Advisory Committee's Note to May 21, 1969 Amendment**

Explanation of change: Reference to "59(f)" is added to conform with amendments to Rule 59.

### III. PLEADINGS AND MOTIONS

**Rule 8. General rules of pleading.**

12. Defenses and objections—When and how presented—By pleading or motion—Motion for judgment on pleadings.
13. Counterclaim and cross-claim.
15. Amended and supplemental pleadings.

**Rule 7. Pleadings allowed—Form of motions.**

#### (a) PLEADINGS.

##### Reply

A plaintiff is not required to reply to an answer where not specifically ordered to do so by the court, nor is it mandatory to reply to an affirmative defense of a release, since under Rule 8(d), where no responsive pleading is required, the aver-

ment is deemed denied. *Wheat v. Safeway Stores, Inc.*, 146 M 105, 404 P 2d 317.

##### References

*Rambur v. Diehl Lumber Co.*, 143 M 432, 391 P 2d 1.

#### (c) DEMURRERS, PLEAS, ETC., ABOLISHED.

##### References

*Payne v. Mountain States Telephone and Telegraph Co.*, 142 M 406, 385 P 2d 100.

**Rule 8. General rules of pleading.**

#### (a) CLAIMS FOR RELIEF.

##### Failure to Plead Claim

Where plaintiff failed to plead claim for deficiency judgment on balance remaining after sale of repossessed vehicles, no deficiency judgment could be rendered and the pleadings could not be amended to conform even though evidence had been received which might have supported such a judgment. *Gallatin Trust & Savings Bank v. Darrah*, 152 M 256, 448 P 2d 734.

##### Separate Claims on Note and Mortgage

Upon default in an action against the unconditional guarantors of a note and to foreclose mortgage securing the note, the holder of the note may properly proceed at its option against either security in the same action. *Bozeman Deaconess Foundation v. Cowgill*, 143 M 98, 387 P 2d 435.

##### References

*Hidden Hollow Ranch v. Collins*, 146 M 321, 406 P 2d 365; *Williams v. Superior Homes, Inc.*, 148 M 38, 417 P 2d 92, 93.

**(b) DEFENSES—FORM OF DENIALS.** A party shall state in short and plain terms his defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If he is without knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state and this has the effect of a denial.



Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, he may make his denials as specific denials of designated averments or paragraphs, or he may generally deny all the averments except such designated averments or paragraphs as he expressly admits; but, when he does so intend to controvert all its averments, including averments of the grounds upon which the court's jurisdiction depends, he may do so by general denial subject to the obligations set forth in Rule 11.

**History:** En. Sec. 8, Ch. 13, L. 1961; amd. Ord. Sup. Ct. June 1, 1964, eff. July 1, 1964.

#### **Amendment**

The 1964 amendment substituted "or" for "of" after "only a part" in the fourth sentence.

(c) **AFFIRMATIVE DEFENSES.** In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

**History:** En. Sec. 8, Ch. 13, L. 1961; amd. Ord. Sup. Ct. June 1, 1964, eff. July 1, 1964.

#### **Amendment**

The 1964 amendment substituted "affirmatively" for "affirmative" after "shall set forth" in the first sentence.

#### **Partial Payment**

Partial payment by special deposit was an affirmative defense which debtor had burden of proving in suit on note; that burden of proof required that it be shown that payment was made on the particular obligation in controversy. *Baker Nat. Bank v. Lestar*, 153 M 45, 453 P 2d 774.

#### **Res Judicata**

Where supreme court affirmed dismissal of complaint by trial court on ground that complaint was unverified as required by section 93-3702 and on additional ground that complaint failed to state a claim upon which relief could be

granted and a week later plaintiff filed a second verified amended complaint which eliminated confusion, the issue of res judicata was not so clear that the supreme court on the second appeal could say that the trial court could have found the defense of res judicata available without an answer under Rule 8(c) or responsive pleading to present the record of the former judgment plus a statement to show why it should be treated as res judicata. *Rambur v. Diehl Lumber Co.*, 144 M 84, 394 P 2d 745, 748.

#### **Unavoidable Accident**

Unavoidable accident is not among defenses that must be pleaded affirmatively and is covered under general denial of negligence. *Graham v. Rolandson*, 150 M 270, 435 P 2d 263.

#### **References**

*Interstate Mfg. Co. v. Interstate Products Co.*, 146 M 449, 408 P 2d 478.

### **(d) EFFECT OF FAILURE TO DENY.**

#### **Reply**

The stipulation in this rule that averments in answer to which no responsive pleading is required are denied, read in conjunction with Rule 7(a), does not

compel the plaintiff to reply to an answer averring the affirmative defense of a release. *Wheat v. Safeway Stores, Inc.*, 146 M 105, 404 P 2d 317.

**Rule 9. Pleading special matters.****(b) FRAUD, MISTAKE, CONDITION OF THE MIND.****References**

Brooks v. Brooks Pontiac, Inc., 143 M 256, 389 P 2d 185.

**(c) CONDITIONS PRECEDENT.****General Denial**

In action by materialman against general contractor for material supplied subcontractor, contractor could not make affirmative defense that statutory notice was not given under materialmen's statute after materialman alleged that he had complied with all conditions precedent to bringing suit and contractor entered general denial; general denial of allegation

that all conditions precedent were performed did not put matter in issue and would be treated as admission that they were performed. *Treasure State Industries, Inc. v. Leigland*, 151 M 288, 443 P 2d 22.

**References**

*Interstate Mfg. Co. v. Interstate Products Co.*, 146 M 449, 408 P 2d 478.

**Rule 11. Signing of pleadings.****Lack of Verification**

Where a complaint was prepared to conform to this rule but lacked verification, and defendant waited until after he received an adverse judgment to raise the

issue in a motion to dismiss on appeal, such motion failed as his proper remedy would have been a motion to strike under Rule 12. *Adams v. Davis*, 142 M 587, 386 P 2d 574.

**Rule 12. Defenses and objections—When and how presented—By pleading or motion—Motion for judgment on pleadings.****(a) WHEN PRESENTED.****Pleading after Denial of Motion**

Defendants had twenty days from day on which motion to dismiss complaint

was denied in which to serve and file responsive pleading. *Sealey v. Majerus*, 149 M 268, 425 P 2d 70.

**DECISIONS UNDER FORMER LAW****Default Taken Prematurely**

Husband who went to Canada and was personally served there in divorce action had forty days in which to answer under the combined time allotted in former Rules 4(D)(5)(g) and 12(a), M. R. Civ. P., and default taken before that time was voidable. *Sowerwine v. Sowerwine*, 145 M 81, 399 P 2d 233.

**Jurisdiction**

Jurisdiction of the court attaches at the time of personal service of the complaint and summons, so that a prematurely entered default judgment is voidable and not void. *Sowerwine v. Sowerwine*, 145 M 81, 399 P 2d 233.

**(b) HOW PRESENTED.** Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under Rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive

pleading, he may assert at the trial any defense in law or fact to the claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such motion by Rule 56.

(i) The cases in which place of trial may be changed are specified in section 93-2906, R. C. M. 1947.

(ii) If the county designated in the complaint is not the proper county for trial of the action, the defendant must at the time of his first appearance request by motion that the trial be had in the proper county. Every defense in law or fact, to a claim for relief in any pleading which defendant desires to present by way of motion as hereinabove provided must be joined with, or inserted in, the motion requesting a change in the place of trial. If the court in which the action is commenced grants the request for change of venue, that court shall not consider nor pass upon other defenses in law, or fact, presented by the motion, but such shall be considered and decided by the court sitting in the proper county after the transfer has been completed. No request for change of venue is waived by being joined in a motion with other defenses or objections in law or fact.

(iii) Any request for change in place of trial for grounds 2 and 3 of section 93-2906, R. C. M. 1947, must be presented by motion within 20 days after the answer to the complaint, or to the cross-claim where a cross-claim is filed, or the reply to any answer, in those cases in which a reply is authorized, has been filed; except that whenever at some time more than twenty days after the last pleading has been filed an event occurs which thereafter affords good cause to believe that an impartial trial cannot be had under ground 2 of said section 93-2906, and competent proof is submitted to the court that such cause of impartiality did not exist within the twenty-day period after the last pleading was filed, then the court may entertain a motion to change the place of trial under ground 2 of section 93-2906 within twenty days after that later event occurs.

(iv) With respect to ground 4 of section 93-2906, R. C. M. 1947, the party who disqualifies a district judge, and who desires a change of venue, must include such request in a motion filed along with the affidavit of disqualification. If the party who does not disqualify the district judge desires a change of venue, he shall make such request by motion within 5 days after being served with a copy of the affidavit of disqualification. Unless the parties have agreed in writing upon another district judge, or upon a member of the bar as judge pro tempore, the disqualified district judge must either call in another district judge within fifteen days after filing of the affidavit of disqualification, or ten days after filing of the motion for change of venue, or, if no other judge is called in, grant the motion for change of venue. If any other qualified district judge shall be called in, as herein provided, and shall, within thirty days after the motion for change of venue has been filed, appear and assume jurisdiction of the cause and of all matters and proceedings therein, no change of the place of trial shall be



made. If the other qualified district judge called in, as herein provided, fails to appear and assume jurisdiction within thirty days after the motion for change of venue has been filed, then the disqualified judge must immediately grant the motion and order a change in the place of trial to some other county.

**History:** En. Sec. 12, Ch. 13, L. 1961; amd. Sec. 1, Ch. 89, L. 1963; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

#### Amendments

The 1965 amendment renumbered some of the numbered clauses in the first sentence and added subdivisions (i) to (iv). See Commission Note below.

The amendment of September 29, 1967, in the introductory paragraph, substituted "a party under Rule 19" for "an indispensable party" in item (7); and, in the fourth sentence, substituted "the" for "that" before "claim for relief."

#### Commission Note to 1965 Amendment

The numbering of the defenses which may be made by motion is changed to conform to that of the Federal Rule, which results in there being no "(3)" because "improper venue" as a ground for motion to dismiss was deleted in 1963. Subdivisions (i), (ii), (iii), and (iv) are added to clarify and detail the time and manner for motions for change of place of trial in the cases specified in Section 93-2906, R. C. M. 1947.

#### Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 12(b), as amended 1966.

Explanation of change: The terminology is changed to accord with the amendment of Rule 19. The numbering of listed defenses of the Montana Rule is retained: "(3) improper venue" is omitted; and the provisions of subdivisions (i), (ii), (iii) and (iv), dealing with motions for change of place of trial, remain unchanged.

#### Failure to State a Claim

Where contract for sale of real property contained statements that time was of the essence and that payments could be made on or before January 15 of each year, action for breach of contract by vendor against vendee for making accelerated payments was improperly dismissed for failure to state a claim, since the words of the contract were ambiguous and it did not appear as a certainty

that plaintiff was entitled to no relief. *Kielmann v. Morgan*, — M —, 478 P 2d 275.

#### Involuntary Dismissal

Rule 41(b), providing for involuntary dismissal which operates as an adjudication upon the merits, has no application to a motion to dismiss for failure to state a claim under this rule. *Rambur v. Diehl Lumber Co.*, 144 M 84, 394 P 2d 745, 750.

#### Motion to Dismiss

A motion to dismiss under this rule is equivalent to a demurrer under former procedure. *Payne v. Mountain States Telephone and Telegraph Co.*, 142 M 406, 385 P 2d 100; *Holtz v. Babcock*, 143 M 341, 389 P 2d 869, 390 P 2d 801; *Rambur v. Diehl Lumber Co.*, 143 M 432, 391 P 2d 1.

While a motion to dismiss for failure to state a claim on which relief can be granted is the same as a demurrer under former Montana procedure and therefore admits to all facts well pleaded, it does not admit to controversial conclusions of law or to the accuracy of alleged construction of written instruments set forth in the pleading. *Holtz v. Babcock*, 143 M 341, 389 P 2d 869, 390 P 2d 801.

An order sustaining a motion to dismiss is not appealable. *Rambur v. Diehl Lumber Co.*, 143 M 432, 391 P 2d 1.

A motion to dismiss was proper under this rule where return was made more than three years after commencement of action in violation of Rule 41(e), and lack of jurisdiction did not have to be pleaded as an affirmative defense. *Whitcraft v. Semenza*, 145 M 94, 399 P 2d 757.

#### Res Judicata

Where supreme court affirmed lower court judgment dismissing complaint for failure to state a claim upon which relief could be granted under this rule, the judgment was not res judicata as to a second amended complaint under the provisions of Rule 56(c) treating motion as a summary judgment where matters outside the pleadings were presented to and not excluded by the court. *Rambur v. Diehl Lumber Co.*, 144 M 84, 394 P 2d 745, 749.

### (c) MOTION FOR JUDGMENT ON THE PLEADINGS.

#### References

*Steffes v. Crawford*, 143 M 43, 386 P 2d 842.

(d) **PRELIMINARY HEARINGS.** The defenses specifically enumerated (1) [to] (7) in subdivision (b) of this rule whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision (c) of this rule shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until trial.

**History:** En. Sec. 12, Ch. 13, L. 1961; amd. Sec. 1, Ch. 89, L. 1963; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

#### Compiler's Notes

The compiler inserted the bracketed "to" near the beginning of this subdivision.

#### Amendments

The amendment of September 29, 1967 substituted "(7)" for "(6)" and deleted "the" before "trial" at the end of the section.

#### Advisory Committee's Note to September 29, 1967 Amendment

Explanation of change: "(7)" has been substituted for "(6)" to correct misnumbering and conform to the defenses enumerated in subdivision (b) [Rule 12(b)].

(g) **CONSOLIDATION OF DEFENSES IN MOTION.** A party who makes a motion under this rule may join with it any other motions herein provided for and then available to him. If a party makes a motion under this rule but omits therefrom any defense or objection then available to him which this rule permits to be raised by motion, he shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subdivision (h)(2) hereof on any of the grounds there stated.

**History:** En. Sec. 12, Ch. 13, L. 1961; amd. Sec. 1, Ch. 89, L. 1963; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

#### Amendments

The amendment of September 29, 1967, in the first sentence, substituted "any" for "the" before "other motions"; in the second sentence, substituted "but omits therefrom any defense or objection" for "and does not include therein all defenses and objections" and "on the defense or objection" for "on any of the defenses or objections"; inserted "a motion" after "except"; and substituted "subdivision (h)(2) \* \* \* there stated" for "subdivision (h) of this rule."

#### Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 12(g) and (h), as amended 1966.

Explanation of change: Where a dilatory defense is omitted from a preanswer motion, under the language of these subdivisions [Rule 12(g) and 12(h)] the cases are divided on the question of whether the defense can be included in the answer although it is not permitted in another motion. This amendment prevents the inclusion of such omitted defenses in the answer as well as in another preanswer motion. This change follows the provisions of the federal amendment, except that "improper venue" is not included in the enumeration in (h)(1)(A), because the times for making motions for a change of venue are specified in subdivisions (b) (ii), (iii) and (iv) of the Montana Rule [12(b)].

The substance of subdivision (g) has not been changed.

(h) **WAIVER OR PRESERVATION OF CERTAIN DEFENSES.**  
 (1) A defense of lack of jurisdiction over the person, insufficiency of process, or insufficiency of service of process is waived (A) if omitted from a motion in the circumstances described in subdivision (g), or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under Rule 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under Rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits.

(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

**History:** En. Sec. 12, Ch. 13, L. 1961; amd. Sec. 1, Ch. 89, L. 1963; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

#### Amendments

The amendment of September 29, 1967 rewrote this rule, dividing it into three subdivisions. For text of former rule, see parent volume.

#### Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 12(g) and (h), as amended 1966.

Explanation of change: See Advisory Committee's Note under Rule 12(g).

#### Lack of Jurisdiction

Defendant who did not plead lack of jurisdiction over the person in his initial response to complaint was precluded from making subsequent motion on the omitted defense under subsection (g) and he thereby waived the defense under provisions of this subsection. *Prentice Lumber Co. v. Spahn*, — M —, 474 P 2d 141.

### Rule 13. Counterclaim and cross-claim.

#### (g) CROSS-CLAIM AGAINST COPARTY.

##### Failure to File

Employer's insurer who paid judgment entered against employer and employee in automobile accident case did not lose its right of indemnity against employee

by employer's failure to file cross-claim in accident action. *St. Paul Fire & Marine Ins. Co. v. Thompson*, 152 M 396, 451 P 2d 98.

### DECISIONS UNDER FORMER LAW

#### Parties to Cross-claim

District court did not have jurisdiction and power to adjudicate mechanics' liens of cross-complainants, materialmen, where

they failed to serve the principal contractor with process. *Greene Plumbing & Heating Co. v. Morris*, 144 M 234, 395 P 2d 252, 256.

(h) JOINDER OF ADDITIONAL PARTIES. Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of Rules 19 and 20.

**History:** En. Sec. 13, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

#### Amendments

The amendment of September 29, 1967 rewrote this rule. For text of former rule, see parent volume.

#### Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 13(h), as amended 1966.

Explanation of change: The amendment to Rule 13(h) incorporates by direct reference the revised criteria and procedures

of Rule 19, as amended. The amendment also expressly refers to Rule 20 thus correcting an existing inadequacy by calling attention to the fact that a party pleading a counterclaim or a cross-claim may join additional persons when the conditions for permissive joinder of parties under Rule 20 are satisfied. Hereafter, for the purpose of determining who must or may be joined as additional parties to a counterclaim or cross-claim, the party pleading the claim is to be regarded as a plaintiff and the additional parties as plaintiffs or defendants as the case may be, and amended Rules 19 and 20 are to be applied in the usual fashion.



**Rule 14. Third-party practice.**

**(a) WHEN DEFENDANT MAY BRING IN THIRD PARTY.**

**Insurance Coverage**

Federal court dismissed action for declaratory judgment declaring obligations of casualty insurance company under an automobile casualty insurance policy which had allegedly been canceled prior to the time of the accident involving the automobile of the insured sued for injuries resulting from the accident, since the issues which did not involve federal law, could be solved in the state court wherein third-party complaint under this rule had been filed by the insured against the insurer in which the insured sought to hold the insurer to the terms of the policy, where the state court could dispose of the coverage problems first under M. R. Civ. P., Rule 42(b). *Western Cas-*

*ualty & Surety Co. v. Pinson*, 255 F Supp 624, 625.

**Separate Trial of Third Party Action**

Third party claim initiated by hospital, which was being sued by minor patient burned by defective television switch while in hospital, against lessor of television equipment should have been separated from main action between hospital and patient and tried separately. *Crosby v. Billings Deaconess Hospital*, 149 M 314, 426 P 2d 217.

**References**

*Wheat v. Safeway Stores, Inc.*, 146 M 105, 404 P 2d 317.

**Rule 15. Amended and supplemental pleadings.**

**(a) AMENDMENTS.**

**Discretionary Power of Court**

Where it was very clear that the supreme court, upon a former appeal of the same case, was unanimous in its decision to affirm the jury verdict and as to the ineffectiveness of additur order, the fact that the supreme court affirmed the jury verdict and thereby finally determined the amount of the award withdrew any discretion that might have been otherwise possessed by the trial judge to allow amendments to the pleadings. State acting by and through State Highway Commission v. Schmidt, 148 M 316, 420 P 2d 153, 155.

Trial court's discretionary power to grant leave to amend pleadings may be limited by a decision of the supreme court upon a former appeal of the same case. State acting by and through State Highway Commission v. Schmidt, 148 M 316, 420 P 2d 153, 155.

**Right to Amendment of Course**

The motion to dismiss for failure to state a claim is not a responsive pleading within the provisions of this rule that complaint may be amended once as a matter of course before a responsive pleading is served. *Rambur v. Diehl Lumber Co.*, 144 M 84, 394 P 2d 745, 748.

**(b) AMENDMENTS TO CONFORM TO THE EVIDENCE.**

**Notice of Claim**

Where plaintiff failed to plead claim for deficiency judgment on balance remaining after sale of repossessed vehicles, the pleadings could not later be amended to

conform to evidence that would have supported a deficiency judgment. *Gallatin Trust & Savings Bank v. Darrah*, 152 M 256, 448 P 2d 734.

**(c) RELATION BACK OF AMENDMENTS.** Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against him, the party to be brought in by amendment (1) has received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him.

The requirements of clauses (1) and (2) hereof are satisfied with respect to any city, village, town, school district, county, or public agency, board or officer of such public bodies, and with respect to the state or any state board, agency or officer thereof, to be brought into the action as defendant, if process is served as provided by Rule 4D(2)(g) and (h) for service upon such defendant.

**History:** En. Sec. 15, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

**Amendments**

The amendment of September 29, 1967 added the last sentence of the first paragraph and added the second paragraph.

**Advisory Committee's Note to September 29, 1967 Amendment**

Source: Fed. R. Civ. P. 15(c), as amended 1966.

Explanation of change: This amendment is designed to avoid problems which have arisen in instances in which the complaint named the wrong defendant and the statute of limitations expired prior to an amendment correcting the error. Where the newly named defendant received notice of the action and knew or should have known that he was the intended defendant, it seems unjust to prohibit relation back.

The most serious difficulties under the Federal Rules have been in suits against

the United States or an agency or officer thereof. The second paragraph of the federal amendment contains specific provisions for such cases and the second paragraph of this amendment adapts the federal provision to suits where the true defendant is the state or a political subdivision thereof.

The change will also further the objective of the provision of Rule 25(d) for automatic substitution of the successor public officer.

**Amendment after Running of Limitations**

If original complaint is timely filed, amended complaint dealing with same transaction set out in original complaint will relate back to original complaint, even though amended complaint changes legal theory of action, adds claim arising out of same transaction or states facts more specifically, and even though amended complaint is filed after running of statute of limitations. *Rozan v. Rosen*, 150 M 121, 431 P 2d 870.

**(d) SUPPLEMENTAL PLEADINGS.**

**Notice**

Trial court was justified in refusing to grant defendants' motion to amend their answer by adding an affirmative defense of compromise and settlement, even though it was represented that some

sort of compromise settlement had been reached after filing of complaint and answer, since defendants had not given plaintiffs notice of this motion as required by this section. *Montgomery v. Gehring*, 145 M 278, 400 P 2d 403.

**Rule 16. Pretrial procedure—Formulating issues.**

**Discretion of Court**

Pretrial procedure is optional, it being left to trial court's discretion whether to

utilize procedure and to what extent. *Lenz v. Mehrens*, 149 M 394, 427 P 2d 297.

**IV. PARTIES**

- Rule 17. Parties plaintiff and defendant—Capacity.
- 18. Joinder of claims and remedies.
- 19. Joinder of persons needed for just adjudication.
- 20. Permissive joinder of parties.
- 23. Class actions.
- 23.1. Derivative actions by shareholders.
- 23.2. Actions relating to unincorporated associations.
- 24. Intervention.

**Rule 17. Parties plaintiff and defendant—Capacity.**

(a) **REAL PARTY IN INTEREST.** Every action shall be prosecuted in the name of the real party in interest. An executor, adminis-

trator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his own name without joining with him the party for whose benefit the action is brought; and when a statute of the state of Montana so provides, an action for the use or benefit of another shall be brought in the name of the state of Montana. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

**History:** En. Sec. 17, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

#### Amendments

The amendment of September 29, 1967 deleted the conjunction "but" between the present first and second sentences and made them separate sentences; and added the third sentence.

#### Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 17(a), as amended 1966.

A bailee is added to the list of real parties in interest; and a minor change is made in the text to make it clear that the specific instances enumerated are not exceptions to, but illustrations of, the rule, and carry no negative implications.

The provision that no action shall be dismissed on the ground that it is not prosecuted in the name of the real party

in interest until a reasonable time has been allowed, after the objection has been raised, for ratification, etc., keeps pace with modern decisions which, in the interests of justice, are inclined to be lenient when an honest mistake has been made in choosing the party in whose name the action is filed.

#### Assignee for Collection

Assignees of claim paid by their liability insurer were real parties in interest and entitled to sue their indemnitor and its insurer in their own names because the assignees had legal title to the claim and this was sufficient to constitute the assignees the real parties in interest. *Washington Water Power Co. v. Morgan Electric Co.*, 152 M 126, 448 P 2d 683.

#### References

*State ex rel. Farmers Elevator Co. of Reserve v. District Court*, 147 M 72, 410 P 2d 160.

### Rule 18. Joinder of claims and remedies.

(a) JOINDER OF CLAIMS. A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or third-party claim, may join, either as independent or as alternate claims, as many claims either legal or equitable or both as he has against an opposing party or co-party.

**History:** En. Sec. 18, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

#### Amendments

The amendment of September 29, 1967 rewrote this rule. For text of former rule, see parent volume.

#### Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 18(a), as amended 1966.

Explanation of change: Under the prior rule some courts have inferred that the standards of Rules 19, 20, and 22 relate to and limit Rule 18(a) in multiple party

cases. Thus, Rule 20(a) resulted in a holding that, unless each claim arose from a single transaction or series of transactions and involved a question common to all defendants, there could be no joinder. *Federal Housing Admr. v. Christianson*, 26 F Supp 419 (D. Conn. 1939). This amendment is designed to overcome such decisions and to state clearly that a party asserting a claim (original claim, counterclaim, cross-claim, third party claim) may join as many claims as he has against an opposing party regardless of the fact that there are multiple parties. The joinder is subject to the court's power to direct appropriate procedure for trying the claims. See Rules 42(b), 20(b), 21. Join-



der of parties is governed by other rules operating independently.

In addition to the changes in the Federal Rules the words "or co-party" are added to the Montana amendment for consistency with the provisions of this amendment for cross-claims and Rule 13(g).

### Divorce Action

Where wife brought suit for divorce and husband filed cross complaint for adjudication of his right to property acquired by their joint effort, the general equity powers of the court were properly invoked by joining in a single action the prayer for divorce and adjudication of the dispute between the parties concerning property rights. *Tolson v. Tolson*, 145 M 87, 399 P 2d 754.

## DECISIONS UNDER FORMER LAW

### Assignor Bringing Action

Assignee of one-half interest of an overriding royalty agreement with plaintiff-assignor and defendant could not be joined as a party plaintiff in a suit to

compel defendant to pay the other half interest to plaintiff whether assignor was a trustee for the assignee or they were tenants in common. *Lowe & Lynn v. Flank Oil Co.*, 144 M 499, 398 P 2d 608.

## Rule 19. Joinder of persons needed for just adjudication.

(a) PERSONS TO BE JOINED IF FEASIBLE. A person who is subject to service of process shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and his joinder would render the venue of the action improper, he shall be dismissed from the action.

**History:** En. Sec. 19, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

### Amendments

The amendment of September 29, 1967 rewrote this rule. For text of former rule, see parent volume.

### Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 19, as amended 1966.

**Explanation of change:** This is a substitution for existing Rule 19 in its entirety. The changes are intended to make clear that whenever feasible the persons materially interested in the subject of an action should be joined as parties so that they may be heard and a complete disposition made. When this comprehensive joinder cannot be accomplished the case should be examined pragmatically and a choice made between the alternatives of proceeding with the action in the absence of partic-

ular interested persons, and dismissing the action.

Even if the court is mistaken in its decision to proceed in the absence of an interested person, it does not by that token deprive itself of the power to adjudicate as between the parties already before it through proper service of process. But the court can make a legally binding adjudication only between the parties actually joined in the action. It is true that an adjudication between the parties before the court may on occasion adversely affect the absent person as a practical matter, or leave a party exposed to a later inconsistent recovery by the absent person. These are factors which should be considered in deciding whether the action should proceed, or should rather be dismissed; but they do not themselves negate the court's power to adjudicate as between the parties who have been joined.

The change straightens out difficulties in the wording of the old rule. The word "indispensable" is used only in a conclu-

sory sense, that is, a person is "regarded as indispensable" when he cannot be made a party and, upon consideration of the factors mentioned in subdivision (b), it is determined that in his absence it would be preferable to dismiss the action, rather than to retain it. The factors mentioned in subdivision (b) of the rule are not intended to be exclusive and others may be applicable in particular situations. The court is to determine whether in equity and good conscience the action should proceed among the parties already before it, or should be dismissed.

#### Injured Party in Dispute between Insurers

Party who brought original action for injuries but who was not party to either of policies of insurance involved and was only indirectly interested in outcome of litigation between two insurance companies was improper party in declaratory action to determine which of two insurance companies was liable. *National Farmers Union Property & Casualty Co. v. General Guaranty Ins. Co.*, 150 M 297, 434 P 2d 708.

(b) DETERMINATION BY COURT OF WHENEVER JOINDER NOT FEASIBLE. If a person as described in subdivision (a)(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

**History:** En. Sec. 19, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

#### Amendments

The amendment of September 29, 1967 rewrote this rule. For text of former rule, see parent volume.

#### Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 19, as amended 1966.

Explanation of change: see Advisory Committee's Note under Rule 19(a).

(c) PLEADING REASONS FOR NONJOINDER. A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in subdivision (a)(1)-(2) hereof who are not joined, and the reasons why they are not joined.

**History:** En. Sec. 19, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

#### Amendments

The amendment of September 29, 1967 rewrote this rule. For text of former rule, see parent volume.

#### Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 19, as amended 1966.

Explanation of change: see Advisory Committee's Note under Rule 19(a).

(d) EXCEPTION OF CLASS ACTIONS. This rule is subject to the provisions of Rule 23.

**History:** En. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

#### Amendments

The amendment of September 29, 1967 rewrote Rule 19 in general and added Rule 19(d) as a separate subdivision of the rule.

#### Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 19, as amended 1966.

Explanation of change: see Advisory Committee's Note under Rule 19(a).

**Rule 20. Permissive joinder of parties.**

(a) **PERMISSIVE JOINDER.** All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

**History:** En. Sec. 20, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

This amendment fits into the amendment to Rule 18, and clarifies the antecedent of the word "them."

**Amendments**

The amendment of September 29, 1967 substituted "these persons" for "of them" near the end of the first sentence; and "defendants" for "of them" near the end of the second sentence.

**Advisory Committee's Note to September 29, 1967 Amendment**

Source: Fed. R. Civ. P. 20(a), as amended 1966.

**Scope**

The scope of this rule is procedural in nature and removes obstacles to joinder without affecting the substantive rights of the parties, so that in a suit by real estate agents against buyer and seller, judgment for plaintiff would not, in effect, make the buyer a party to a prior contract between the agents and the seller. *Wheat v. Safeway Stores, Inc.*, 146 M 105, 404 P 2d 317.

**(b) SEPARATE TRIALS.****References**

*Wheat v. Safeway Stores, Inc.*, 146 M 317, 404 P 2d 317.

**Rule 21. Misjoinder and nonjoinder of parties.****References**

*Wheat v. Safeway Stores, Inc.*, 146 M 105, 404 P 2d 317.

**Rule 23. Class actions.**

(a) **PREREQUISITES TO A CLASS ACTION.** One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

**History:** En. Sec. 23, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

**Compiler's Notes**

The order of September 29, 1967 revised Rule 23 in general and rewrote Rule 23(a) in particular. For text of former Rule 23(a), see parent volume.



(b) **CLASS ACTIONS MAINTAINABLE.** An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition: (1) the prosecution of separate actions by or against individual members of the class would create a risk of

(A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or

(B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or (3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.

**History:** En. Sec. 23, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

#### Compiler's Notes

The order of September 29, 1967 re-wrote Rule 23 generally. For text of former Rule 23(b), "Secondary Action By Shareholders," see parent volume, and see Rule 23.1, "Derivative Actions By Shareholders" in this supplement.

#### Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 23, as amended 1966.

Explanation of change: The amended rule describes in more practical terms than

existed under the old rule the occasions for maintaining class actions; provides that all actions maintained to the end as such will result in judgments including those whom the court finds to be members of the class, whether or not the judgment is favorable to the class; and refers to the measures which can be taken to assure the fair conduct of these actions. It is designed to clear up difficulties in drawing distinctions between joint, common, secondary or several rights, and in defining categories in terms of "true," "hybrid," and "spurious," and to give a better guide to the extent and binding effect of judgments.

(c) **DETERMINATION BY ORDER WHETHER CLASS ACTION TO BE MAINTAINED—NOTICE—JUDGMENT—ACTIONS CONDUCTED PARTIALLY AS CLASS ACTIONS.**

(1) As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this subdivision may be conditional, and may be altered or amended before the decision on the merits.

(2) In any class action maintained under subdivision (b)(3), the court shall direct to the members of the class the best notice practicable

under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that (A) the court will exclude him from the class if he so requests by a specified date; (B) the judgment, whether favorable or not, will include all members who do not request exclusion; and (C) any member who does not request exclusion may, if he desires, enter an appearance through his counsel.

(3) The judgment in an action maintained as a class action under subdivision (b)(1) or (b)(2), whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under subdivision (b)(3), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in subdivision (c)(2) was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

(4) When appropriate (A) an action may be brought or maintained as a class action with respect to particular issues, or (B) a class may be divided into subclasses and each subclass treated as a class, and the provisions of this rule shall then be construed and applied accordingly.

**History:** En. Sec. 23, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

#### **Compiler's Notes**

The order of September 29, 1967 rewrote Rule 23 generally. Former Rule 23(c), "Dismissed On Compromise," was somewhat similar to present Rule 23(e). For text of former rules, see parent volume.

#### **Advisory Committee's Note to September 29, 1967 Amendment**

Source: Fed. R. Civ. P. 23, as amended 1966.

**Explanation of change:** In order to avoid the necessity for awaiting final judgment before obtaining review by the supreme court of an order under subdivision (c)(1) refusing to permit a class action to be maintained as such, Rule (1)(b) of the Montana Rules of Appellate Civil Procedure is amended to make such an order appealable. There does not seem to be a corresponding necessity for direct appeal, as distinct from appeal from the final judgment, where the court determines that the action may be maintained as a class action.

(d) **ORDER IN CONDUCT OF ACTIONS.** In the conduct of actions to which this rule applies, the court may make appropriate orders: (1) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument; (2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action; (3) imposing conditions on the representative parties or on intervenors; (4) requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly; (5) dealing with similar procedural matters. The orders may be combined with an order under Rule 16, and may be altered or amended as may be desirable from time to time.

**History:** En. Sec. 23, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

**Compiler's Notes**

The order of September 29, 1967 re-wrote Rule 23 generally. For text of former Rule 23(d), "Orders To Ensure Adequate Representation," see parent volume.

(e) **DISMISSAL OR COMPROMISE.** A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.

**History:** En. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

**Compiler's Notes**

The order of September 29, 1967 re-

wrote Rule 23 generally and added Rules 23(e) and 23(f). For text of former Rule 23(c), "Dismissal or Compromise," see parent volume.

(f) **SECURITY FOR COSTS.** Security for costs and charges, which may be awarded against a representative party, may be required by an opposing party. When required, all proceedings in the action must be stayed until an undertaking, executed by two or more persons, is filed with the clerk, to the effect that they will pay such costs and charges as may be awarded against the representative party by judgment, or in the progress of the action, not exceeding the sum of one thousand dollars. A new or an additional undertaking may be ordered by the court or judge, upon proof that the original undertaking is insufficient security, and proceedings in the action stayed until such new or additional undertaking is executed and filed.

**History:** En. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

**Compiler's Notes**

The order of September 29, 1967 re-wrote Rule 23 generally and added Rules 23(e) and 23(f).

**Advisory Committee's Note to September 29, 1967 Amendment**

Explanation of change: In addition to the changes of the Federal Rule [23], subdivision (f) is added to the Montana Rules in order to afford protection against selection of a representative party who may not be responsible for costs and charges.

**Rule 23.1. Derivative actions by shareholders.**

In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall allege with particularity the efforts, if any, made by the plaintiff to obtain the action he desires from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for his failure to obtain the action or for not making the effort. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association. The action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall



be given to shareholders or members in such manner as the court directs.

**History:** En. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

**Advisory Committee's Note to September 29, 1967 Amendment**

Source: Fed. R. Civ. P. 23.1, as adopted 1966.

**Explanation of change:** A derivative action by a shareholder of a corporation or by a member of an unincorporated association has distinctive aspects which require the special provisions set forth in the new rule. The next-to-the-last sentence recognizes that the question of adequacy of representation may arise when the plaintiff is one of a group of shareholders or members.

The court has inherent power to provide for the conduct of the proceedings in a derivative action, including the power to determine the course of the proceedings

and require that any appropriate notice be given to shareholders or members.

The Montana amendment conforms to the 1966 federal amendment, except that it omits the federal provision that the complaint be verified and allege "(1) that the plaintiff was a shareholder or member at the time of the transaction of which he complains or that his share or membership thereafter devolved on him by operation of law, and (2) that the action is not a collusive one to confer jurisdiction on a court of the United States which it would not otherwise have." No reason is apparent for requiring a verified complaint in this type of action and not in others, and the allegations required by the federal amendment and omitted from this proposal appear to be designed to prevent abuse of federal jurisdiction and to be unnecessary in state practice.

**Rule 23.2. Actions relating to unincorporated associations.**

An action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties may be maintained only if it appears that the representative parties will fairly and adequately protect the interests of the association and its members. In the conduct of the action the court may make appropriate orders corresponding with those described in Rule 23(d), and the procedure for dismissal or compromise of the action shall correspond with that provided in Rule 23(e).

**History:** En. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

**Advisory Committee's Note**

Source: Fed. R. Civ. P. 23.2, as adopted 1966.

**Explanation of change:** Although an action by or against representatives of the membership of an unincorporated associ-

ation has often been viewed as a class action, the real or main purpose of this characterization has been to give "entity treatment" to the association when for formal reasons it cannot sue or be sued as a jural person under Rule 17. Rule 23.2 deals separately with these actions, referring where appropriate to Rule 23.

**Rule 24. Intervention.**

(a) **INTERVENTION OF RIGHT.** Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

**History:** En. Sec. 24, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

**Amendments**

The amendment of September 29, 1967 rewrote item (2), substituting it for for-

mer items (2) and (3), allowing intervention when representation of applicant's interest might be inadequate and he might be bound by judgment and when applicant would be adversely affected by court's disposition of property.

**Advisory Committee's Note to September 29, 1967 Amendment**

Source: Fed. R. Civ. P. 24(a), as amended 1966.

Explanation of change: Subdivision (2) is changed because a class member who claims that his "representative" does not adequately represent him, and is able to establish that proposition with sufficient probability, should not, as was required under the prior rule, be put to the risk of having a judgment entered in the action which by its terms extends to him, and be obliged to test the validity of the judgment as applied to his interest by a later collateral attack. Rather he should, as general rule, be entitled to intervene in the action.

The amendment provides that an applicant is entitled to intervene in an action when his position is comparable to that of a person under Rule 19(a)(2)(i), as amended, unless his interest is already adequately represented in the action by existing parties. The Rule 19(a)(2)(i) criterion imports practical consideration, and the deletion of the "bound" language

similarly frees the rule from undue preoccupation with strict considerations of res judicata.

The representation whose adequacy comes into question under the amended rule is not confined to formal representation like that provided by a trustee for his beneficiary or a representative party in a class action for a member of the class. A party to an action may provide practical representation to the absentee seeking intervention although no formal relationship exists between them, and the adequacy of this practical representation will then have to be weighed.

Subdivision (3) is deleted for if an absentee would be substantially affected in a practical sense by the determination made in an action, he should, as a general rule, be entitled to intervene, and his right to do so should not depend on whether there is a fund to be distributed or otherwise disposed of as was required under that subdivision. Intervention of right is here seen to be a kind of counterpart to Rule 19(a)(2)(i) on joinder of persons needed for a just adjudication: where, upon motion of a party in an action, an absentee should be joined so that he may protect his interest which as a practical matter may be substantially impaired by the disposition of the action, he ought to have a right to intervene in the action on his own motion.

(c) **PROCEDURE.** A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The same procedure shall be followed when a statute gives a right to intervene. When the constitutionality of an act of the legislative assembly affecting the public interest is drawn in question in any action to which neither the state nor any agency or officer thereof is a party, the court shall notify the attorney general of the state and the attorney general may within 20 days thereafter intervene in the same manner on behalf of the state.

**History:** En. Sec. 24, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

**Amendments**

The amendment of September 29, 1967, in the first sentence, substituted "the" for "all" before "parties" and "as provided in Rule 5" for "affected thereby" after "parties."

**Rule 25. Substitution of parties.**

**(a) DEATH.**

**Waiver of Substitution Requirements**

Failure of plaintiff to substitute exec-

**Advisory Committee's Note to September 29, 1967 Amendment**

Source: Fed. R. Civ. P. 24(a), as amended 1963.

Explanation of change: This amendment conforms to the amendment of Rule 5(a). See note to that amendment.

utrix of doctor's estate for doctor, in tort action initiated against doctor before his

death was waived where attorneys for doctor were also attorneys for executrix, attorneys and executrix were present at trial of action and attorneys for executrix

had filed motion for additional time in which to perfect appeal from judgment against doctor. *Nagaard v. Feda*, 149 M 190, 425 P 2d 79.

## V. DEPOSITIONS AND DISCOVERY

Rule 26. Depositions pending action.

28. Persons before whom depositions may be taken.
30. Depositions upon oral examination.
33. Interrogatories to parties.
35. Physical and mental examination of persons.

Rule 26. Depositions pending action.

### (b) SCOPE OF EXAMINATION.

#### References

State ex rel. State Highway Commis-

sion v. District Court, 147 M 348, 412 P 2d 832.

(e) OBJECTIONS TO ADMISSIBILITY. Subject to the provisions of Rules 28(b) and 32(c), objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

History: En. Sec. 26, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

#### Amendments

The amendment of September 29, 1967 inserted reference to Rule 28(b) and "the" after "require the exclusion of."

Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 26(e), as amended 1963.

Explanation of change: This amendment conforms to the amendment of Rule 28(b).

Rule 28. Persons before whom depositions may be taken.

(b) IN FOREIGN COUNTRIES. In a foreign country, depositions may be taken (1) on notice before a person authorized to administer oaths in the place in which the examination is held, either by the law thereof or by the law of the United States, or (2) before a person commissioned by the court, and a person so commissioned shall have the power by virtue of his commission to administer any necessary oath and take testimony, or (3) pursuant to letter rogatory. A commission or a letter rogatory shall be issued on application and notice, and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter rogatory that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter rogatory may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter rogatory may be addressed "To the Appropriate Authority in [here name the country]." Evidence obtained in response to a letter rogatory need not be excluded merely for the reason that it is not a verbatim transcript or that the



testimony was not taken under oath or for any similar departure from the requirements for depositions taken within the United States under these Rules.

**History:** En. Sec. 28, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

#### **Amendments**

The amendment of September 29, 1967 deleted "state or" after "In a foreign"; substituted "may" for "shall" after "depositories"; and rewrote the remainder of the Rule. For text of former Rule, see parent volume.

#### **Advisory Committee's Note to September 29, 1967 Amendment**

Source: Fed. R. Civ. P. 28(b), as amended 1963.

Explanation of change: The amendment of clause (1) is designed to facilitate depositions in foreign countries by enlarging the class of persons before whom the depositions may be taken on notice.

It makes clear that the appointment of a person by commission in itself confers

power upon him to administer any necessary oath.

It negates the judicial requirement sometimes stated that letters rogatory will not issue unless the use of a notice or commission is shown to be impossible or impractical. It permits a sound choice between depositions under a letter rogatory and on notice or by commission in the light of all the circumstances.

In executing a letter rogatory the courts of other countries may be expected to follow their customary procedure for taking testimony. The last sentence of the amended subdivision provides, contrary to the implications of some authority, that evidence recorded in such a fashion need not be excluded on that account. Whether or to what degree the value or weight of the evidence may be affected by the method of taking or recording the testimony is left for determination according to the circumstances of the particular case.

(e) DEPOSITION TO BE TAKEN IN SISTER STATES AND FOREIGN COUNTRIES FOR USE IN THIS STATE. Whenever the deposition of any person is to be taken in a sister state or a foreign country, or any other jurisdiction, foreign or domestic, for use in this state, pursuant either to notice or stipulation, the Clerk or equivalent officer of any Court having jurisdiction at the place where the witness is to be served or the deposition taken, upon proof that notice has been duly served for taking of the deposition or that the parties have stipulated to such taking, may issue the necessary subpoenas or equivalent court instruments to require such witness to attend for the taking of the deposition at the time and place in the sister state or foreign country, or any other jurisdiction, foreign or domestic, designated in the notice or stipulation.

**History:** En. Sup. Ct. Ord. 10750-8, Sept. 10, 1968, eff. Jan. 1, 1969.

#### **Advisory Committee's Note**

Officials in some sister states have in-

sisted upon some specific authorization for the issuance of subpoenas by them for use in Montana litigation. The amendment provides that authority.

### **Rule 30. Depositions upon oral examination.**

#### **(b) ORDERS FOR THE PROTECTION OF PARTIES AND DEPENDENTS.**

##### **Limitation of Examination**

In a libel action it was not error for the trial judge to issue a minute entry order refusing to require the defendant to answer questions submitted by the plaintiff as the court has the power to limit the examination and protect him from annoyance, embarrassment or oppression.

*Steffes v. Crawford*, 143 M 43, 386 P 2d 842.

##### **References**

*State ex rel. State Highway Commission v. District Court*, 147 M 348, 412 P 2d 832.

(f) **CERTIFICATION AND FILING BY OFFICER—COPIES—NOTICE OF FILING.** (1) The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then securely seal the deposition in an envelope endorsed with the title of the action and marked "Deposition of (here insert name of witness)" and shall promptly file it with the court in which the action is pending or send it by registered or certified mail to the clerk thereof for filing.

(2) and (3). \* \* \* [Same as parent volume.]

**History:** En. Sec. 30, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

**Advisory Committee's Note to September 29, 1967 Amendment**

Source: Fed. R. Civ. P. 30(f), as amended 1963.

This proposal is patterned after the 1963 federal amendment, and conforms to provisions of Rule 4 which permit the use of certified mail as an alternative to the use of registered mail.

#### **Amendments**

The amendment of September 29, 1967, in clause (1), inserted "as certified" before "mail to the clerk" in the last sentence.

### **Rule 33. Interrogatories to parties.**

Any party may serve upon any adverse party, who has been served with process or who has appeared, written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association, by any officer or agent, who shall furnish such information as is available to the party. A party serving interrogatories upon an adverse party shall file the same in the court in which the action is pending. The interrogatories shall be answered separately and fully in writing under oath. The party answering the interrogatories shall set forth a verbatim re-copy of each of the interrogatories, followed by the answer thereto, and shall file the answers in the court in which the action is pending. The answers shall be signed by the person making them; and the party upon whom the interrogatories have been served for answer shall serve a copy of the answers upon every party who has made written appearance within 20 days after the service of interrogatories upon him, unless the court, on motion and notice and for good cause shown, enlarges or shortens the time. Within 20 days after service of interrogatories a party may serve written objections thereto together with a notice of hearing the objections at the earliest practicable time. Answers to interrogatories to which objection is made shall be deferred until the objections are determined.

Interrogatories may relate to any matters which can be inquired into under Rule 26(b), and the answers may be used to the same extent as provided in Rule 26(d) for the use of the deposition of a party. Interrogatories may be served after a deposition has been taken, and a deposition may be sought after interrogatories have been answered, but the court, on motion of the deponent or the party interrogated, may make such protective order as justice may require. The number of interrogatories or of sets of interrogatories to be served is not limited except as justice requires to protect the party from annoyance, expense, embarrassment, or oppression. The provisions of Rule 30(b) are applicable for the protection of the party from whom answers to interrogatories are sought under this rule.



**History:** En. Sec. 33, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965; amd. Sup. Ct. Ord. 10750, Nov. 28, 1966, eff. Jan. 1, 1967.

#### Amendments

The amendment of April 1, 1965 added a third paragraph which read: "A party desiring to serve interrogatories upon an adverse party shall file and serve a copy thereof upon every other party. The party answering the interrogatories shall file the answers in the court in which the action is pending and serve a copy thereof upon every other party."

The amendment of November 28, 1966, in the first paragraph, inserted the second and fourth sentences and substituted "for answer shall serve a copy of the answers upon every party who has made a written appearance" for "shall serve a copy of the answers on the party submitting the interrogatories" in the fifth sentence; and deleted the paragraph added in 1965.

#### Commission Note to 1965 Amendment

This amendment is consistent with Rule 5. The requirement of service of inter-

rogatories and answers upon all other parties to the litigation may save other parties additional time and effort in duplication of interrogatories resultant from lack of knowledge of what other parties have done. The requirement of filing of answers makes them available to judges who may want to see them.

#### Commission Note to 1966 Amendment

To put the interrogatories and answers into one document for convenience of use, and to remove any obstacle to the service of interrogatories which may result from the requirement of service upon "every other party."

#### Scope

Although this section should be liberally construed to make all relevant facts available to parties in advance of trial and to reduce the possibilities of surprise and unfair advantage, it cannot become a weapon for punishment or forfeiture, or an instrument for the avoidance of a trial on the merits. *Wolfe v. Northern Pacific Ry. Co.*, 147 M 29, 409 P 2d 528.

### Rule 34. Discovery and production of documents and things, etc.

#### Inspection of Land

State's motion for inspection to drill wells on condemnee's property should have been allowed. *State ex rel. State Highway Commission v. District Court*, 147 M 348, 412 P 2d 832.

#### Real Estate Appraisals

In proceeding to condemn strip of land in front of leased building, highway commission could not be compelled by lessee to produce appraisals containing no opinion as to damages to, or value of, leasehold. *State Highway Commission v. District Court*, 149 M 384, 427 P 2d 49.

### Rule 35. Physical and mental examination of persons.

(b) **REPORT OF FINDINGS.** (1). \* \* \* [Same as parent volume.]

(2) **Waiver of Privilege.** Either by (1) requesting and obtaining a report of the examination ordered as provided herein, or by taking the deposition of the examiner, or by (2) commencing an action which places in issue the mental or physical condition of the party bringing the action, the party examined, or the party bringing the action, waives any privilege he may have in that action or any other action involving the same controversy, regarding the testimony of every person who has treated, prescribed, consulted, or examined or may thereafter treat, consult, prescribe or examine, such party in respect to the same mental or physical condition; but such waiver shall not apply to any treatment, consultation, prescription or examination for any mental or physical condition not related to the pending action. Upon motion seasonably made, and upon notice and for good cause shown, the court in which the action is pending, may make an order prohibiting the introduction in evidence of any such portion of the medical record of any person as may not be relevant to the issues in the pending action.



**History:** En. Sec. 35, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-6, Sept. 29, 1967, eff. Jan. 1, 1968.

### Amendments

The amendment of September 29, 1967 rewrote clause (2). For text of former rule, see parent volume.

### Advisory Committee's Note to September 29, 1967 Amendment

This amendment extends the existing

modification by Rule 35 of subparagraph 4 of R. C. M. 1947, sec. 93-701-4. The purpose is to facilitate the obtaining of competent medical testimony and the use of testimony of the original attending physician, especially in personal injury cases. The proposal coincides with the view recommended in Wigmore on Evidence (McNaughton rev. 1961), Vol. VIII, secs. 2380 and 2380a.

## Rule 36. Admission of facts and of genuineness of documents.

### (a) REQUEST FOR ADMISSION.

#### Construction

The intent of this rule is that the party served shall make a sworn statement of the truth of any relevant matters of fact set forth in the request for admissions. *Daniels v. Paddock*, 145 M 207, 399 P 2d 740.

#### Discretion of Trial Court

Where defendant failed to file admissions on plaintiff's request and was not permitted to file them later or to reopen hearing on summary judgment, whether defendant's admissions, which were signed and verified by defendant's counsel as being made from a letter received from

the defendant, met the intent of this rule was a matter within the discretion of the trial court. *Daniels v. Paddock*, 145 M 207, 399 P 2d 740.

#### Failure To Answer

In suit by client against his attorney for money which attorney failed to forward to client, request for admissions were deemed admitted where attorney failed to answer. *Daniels v. Paddock*, 145 M 207, 399 P 2d 740.

#### References

*Olson v. City Commission of City of Helena*, 146 M 386, 407 P 2d 374.

## Rule 37. Refusal to make discovery—Consequences.

### (a) REFUSAL TO ANSWER.

#### Appellate Review

An appellate court will reverse a trial court judge, who has refused to invoke the sanctions of this section, only when his judgment may materially affect the substantial rights of the parties and allow a possible miscarriage of justice. *Wolfe v. Northern Pacific Ry. Co.*, 147 M 29, 409 P 2d 528.

#### Judge's Discretion

It was not an abuse of discretion for trial judge to allow witness for oil refinery to testify as to condition of ground about railroad tracks where plaintiff-

switchman crushed his hand beneath wheel of oil tank car when he allegedly slipped in oil or grease on concrete walkway of refinery in trying to mount the train, even though railroad had not included witness' name in its answer to plaintiff's interrogatories, since witness was the oil refinery's and plaintiff, knowing oil refinery had been joined as a third-party defendant, had failed to seek disclosure from it, or a pretrial conference, and had allowed other witnesses to testify to the same matter at trial. *Wolfe v. Northern Pacific Ry. Co.*, 147 M 29, 409 P 2d 528.

## VI. TRIALS

Rule 41. Dismissal of actions.

43. Evidence.

44. Proof of official record.

44.1. Determination of foreign law.

46. Exceptions unnecessary.

47. Jurors.

50. Motion for a directed verdict and for judgment notwithstanding the verdict.

52. Findings by the court.

**Rule 38. Jury trial of right.****(a) RIGHT RESERVED.****Declaratory Judgment**

A party has a right to a jury trial on demand where the suit is for a declara-

tory judgment and there are triable issues of fact. *Mahan v. Hardland*, 147 M 78, 410 P 2d 156.

**Rule 39. Trial by jury or by the court.****(c) ADVISORY JURY AND TRIAL BY CONSENT.****New Trial**

In an equity action for specific performance tried before an advisory jury, where the court granted defendant's mo-

tion for a new trial, the court was not required to order that the new trial be by jury as had the original proceedings. *Waite v. Waite*, 143 M 248, 389 P 2d 181.

**Rule 41. Dismissal of actions.****(a) VOLUNTARY DISMISSAL—EFFECT THEREOF.****Dismissal As Affecting Counterclaim**

Motion to dismiss complaint was properly granted where counterclaiming defendant did not object to dismissal, where trial was in fact had on defendant's counterclaim and where defendant in fact obtained judgment against plaintiff on coun-

terclaim. *Ratcliff v. Murphy*, 150 M 31, 430 P 2d 627.

**References**

*Vennes v. Nollmeyer*, 144 M 43, 394 P 2d 178.

**(b) INVOLUNTARY DISMISSAL—EFFECT THEREOF.** For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against him. After the plaintiff, in an action tried by the court without a jury, has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 52(a). Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction or failure to join a party under Rule 19, operates as an adjudication upon the merits.

**History:** En. Sec. 41, Ch. 13, L. 1961; amd. Sec. 1, Ch. 111, L. 1963; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

**Advisory Committee's Note to September 29, 1967 Amendment**

Source: Fed. R. Civ. P. 41(b), as amended 1963 and 1966.

**Amendments**

The amendment of September 29, 1967 inserted "in an action tried by the court without a jury" before "has completed" in the second sentence and deleted the same phrase from the beginning of the third sentence; and, in the last sentence, substituted "failure to join a party under Rule 19" for "for lack of an indispensable party."

Explanation of change: Under the prior text of the second sentence of this subdivision [Rule 41(b)], the motion for dismissal at the close of the plaintiff's evidence may be made in a case tried to a jury as well as in a case tried without a jury. But when made in a jury-tried case, this motion overlaps the motion for a directed verdict under Rule 50(a), which is also available in the same situation. This overlap has caused confusion. Accord-

ingly it is amended to provide that the motion for dismissal at the close of the plaintiff's evidence shall apply only to nonjury cases (including cases tried with an advisory jury). Hereafter the correct motion in jury-tried cases would be a motion for a directed verdict. This amendment involves no change of substance.

The first sentence of Rule 41(b), providing for dismissal for failure to prosecute or to comply with the Rules or any order of court, and the general provisions of the last sentence remain applicable in jury as well as nonjury cases.

This amendment also changes the last sentence of this subdivision to accord with the amendment to Rule 19.

#### Failure To Prosecute

Trial court abused discretion in dismissing action for failure of plaintiff to prosecute where case was returned by supreme court to lower court for new trial but trial court failed to set it for trial at next jury term as per order of supreme court. *Jangula v. United States Rubber Co.*, 149 M 241, 425 P 2d 319.

Case was properly dismissed for failure of plaintiff to prosecute where nothing was done to bring it to trial for over twelve years despite fact that defendant had shown no injury by delay, that attorneys had agreed to get together and try to work out agreement and that defendant had filed cross-complaint which was de-

fensive in character. *Cremer v. Braaten*, 151 M 18, 438 P 2d 553.

#### Failure To State a Claim

This rule has no application to a motion to dismiss for failure to state a claim under Rule 12(b). *Rambur v. Diehl Lumber Co.*, 144 M 84, 394 P 2d 745, 750.

#### Findings and Conclusions

Lower court ruling that "no cause of action or claim exists or has been proven" and "the same is hereby dismissed" was sufficient compliance with the Rules despite plaintiff's contention that findings of fact and conclusions of law did not meet requirements of Rules. *Mondakota Gas Co. v. Becker*, 151 M 513, 445 P 2d 745.

#### Insufficiency of Evidence

District court erred in not granting defendant's motions for dismissal and directed verdict where evidence, viewed in light most favorable to plaintiff, did not support verdict for him. *MacDonald v. Protestant Episcopal Church*, 150 M 332, 435 P 2d 369.

Defendant was entitled to have motion for involuntary dismissal granted where plaintiff wholly failed to establish prima facie case of negligence. *Knowlton v. Sandaker*, 150 M 438, 436 P 2d 98.

#### References

*Whitcraft v. Semenaj*, 145 M 97, 399 P 2d 757.

### DECISIONS UNDER FORMER LAW

#### Insufficient Evidence

Where plaintiff's property was damaged by the dropping of fire retardant from airplanes and at the trial he failed to show the lack of proper care under the circumstances, the trial court properly nonsuited plaintiff upon defendant's motion. *Stocking v. Johnson Flying Service*, 143 M 61, 387 P 2d 312.

No cause should be withdrawn from the jury unless evidence is susceptible of but one construction by reasonable men and that in favor of the defendant, or the evidence is in such condition that if the jury

returned a verdict in favor of the plaintiff, it would be the court's duty to set it aside. *Jackson v. William Dingwall Co.*, 145 M 127, 399 P 2d 236.

Trial court properly granted directed verdict for defendant, employer and ranch foreman, where plaintiff, a ranch hand, was injured while riding atop a bobsled loaded with hay, since plaintiff failed to make out a prima facie case that tipping of bobsled was due to negligence. *Jackson v. William Dingwall Co.*, 145 M 127, 399 P 2d 236.

(e) **FAILURE TO SERVE SUMMONS.** No action heretofore or hereafter commenced shall be further prosecuted as to any defendant who has not appeared in the action or been served in the action as herein provided within three years after the action has been commenced, and no further proceedings shall be had therein, and all actions heretofore or hereafter commenced shall be dismissed by the court in which the same shall have been commenced, on its own motion, or on the motion of any party interested therein, whether named in the complaint as a party or not, unless summons shall have been issued within one year, or unless



summons issued within one year shall have been served and return made and filed with the clerk of the court within three years after the commencement of said action, or unless appearance has been made by the defendant or defendants therein within said three years. When more than one defendant has been named in an action, the action may within the discretion of the trial court be further prosecuted against any defendant who has appeared within three years, or upon whom summons which has been issued within one year has been served and return made and filed with the clerk within three years as herein required.

**History:** En. Sec. 1, Ch. 111, L. 1963; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965.

#### Amendment

The 1965 amendment inserted "as to any defendant who has not appeared in the action or been served in the action as herein provided within three years after the action has been commenced" in the first part of the first sentence; substituted "unless summons shall have been issued within one year, or unless summons issued within one year shall have been served and return made and filed with the clerk of the court" for "summons shall have been served and return made" in the latter part of the first sentence; and added the second sentence.

#### Commission Note to 1965 Amendment

This clarifies and brings together the laches provisions with respect to issuance and service of summons. At present Rules 4 C(1), 41(e), Section 93-3002, R. C. M. 1947, and Rule 12(b) all need to be referred to. This amendment incorporates the laches provision of Section 93-4705 (7), R. C. M. 1947, which was repealed by Chapter 13 of the 1961 Session Laws.

This amendment renders Section 93-3002, R. C. M. 1947, unnecessary, and that section superseded and added to Tables B and C.

#### How Raised

Where return was made more than

three years after commencement of action, this subsection, since it is not a statute of limitations, could be raised by motion under Rule 12(b), rather than pleaded as an affirmative defense. *Whitcraft v. Semenza*, 145 M 94, 399 P 2d 757.

#### Pending Actions

Even though there was a lapse of a year between repeal of former section 93-4705, R. C. M. 1947, and adoption of this rule, which is identical, application of this rule to a pending action in which return was made more than three years after commencement of the action was proper, since not only was a reasonable time allowed before the effective date of the change, but the information was widely distributed. *Whitcraft v. Semenza*, 145 M 94, 399 P 2d 757.

#### Probate Matters

Rule does not apply to service of summons in suit on rejected claim in probate which is governed exclusively by statute providing for contesting rejected claims in probate. *Werning v. McFarland*, 149 M 137, 423 P 2d 851.

#### Renewal of Claim

A judgment is not *res judicata* unless it is on the merits, so that a dismissal under this rule, since it is not a statute of limitations, does not constitute a bar to another suit on the same claim. *Whitcraft v. Semenza*, 145 M 94, 399 P 2d 757.

### DECISIONS UNDER FORMER LAW

#### Quashing Summons

District court exceeded its jurisdiction in denying motion to quash summons and dismiss action where the summons had not been served and returned within the

three years required by this rule prior to 1965 amendment. *State ex rel. Belwin, Inc. v. Davison*, 148 M 345, 420 P 2d 842, 844.

### Rule 42. Consolidation—Separate trials.

#### (b) SEPARATE TRIALS.

##### Abuse of Discretion

In wrongful death and survival action trial court abused its discretion by denying motion for separate trial on issue of validity of release where separate trials

would result in convenience and economy of time to parties, witnesses and court and since possible finding that release was valid would end matter and trial of complicated issue of wrongful death and sur-

vival would be avoided. *State ex rel. Northern Pacific R. Co. v. District Court of Sixteenth Judicial District in and for County of Rosebud*, — M —, 467 P 2d 145.

### Discretion of Court

Grant of separate trial under this section on counterclaims on matters unrelated to plaintiff's complaint was within discretion of district judge and was not disturbed since no clear abuse of discretion was apparent. *State ex rel. Rooks v. District Court*, 153 M 189, 456 P 2d 308.

### Insurance Coverage

Federal court dismissed action for declaratory judgment declaring obligations of casualty insurance company under an automobile insurance policy, which allegedly had been canceled prior to the time of the accident involving the automobile of the insured who was being sued for injuries resulting from the accident in

the state court, since the issues, which did not involve federal law, could be solved in the state court wherein third-party complaint under M. R. Civ. P., Rule 14(a), had been filed by the insured against the insurer in which insured sought to hold the insurer to the terms of the policy, where state court could dispose of the coverage problem first under this rule. *Western Casualty & Surety Co. v. Pinson*, 255 F Supp 624, 625.

### Permissive Joinder

Since this section allows for separate trials, practically, it seems desirable to give the broadest possible reading to the permissive language of Rule 20. *Wheat v. Safeway Stores, Inc.*, 146 M 105, 404 P 2d 317.

### References

*Bozeman Deaconess Foundation v. Cowgill*, 143 M 98, 387 P 2d 435.

## Rule 43. Evidence.

### (b) SCOPE OF EXAMINATION AND CROSS-EXAMINATION.

#### Agent of Opposing Party

District court properly permitted plaintiff to examine driver for company under contract with defendant as an adverse witness under this section, for the purpose of establishing the driver's negligence to be imputed to the defendant, because under the applicable Federal Employer's Liability Act the driver was an agent of the defendant. *Salvail v. Great Northern Ry. Co.*, — M —, 473 P 2d 549.

#### Plaintiff Called as Defense Witness

Where plaintiff appeared as her own only witness and was not cross-examined by the defendant who then called her as a defense witness, the defense was bound

by her testimony even though it came after the plaintiff herself had rested her case. *Closé v. Rueggsegger's Estate*, 143 M 32, 386 P 2d 739.

#### Statutory Proceedings

In statutory action brought to remove administrator for misappropriation of funds of estate, administrator could be examined as adverse witness since Rule 81, excluding statutory proceedings from Rules of Civil Procedure to extent that statutory proceedings are contrary to Rules, does not bar examination of administrator as adverse witness. In re *Estate & Guardianship of Wyman*, 149 M 525, 429 P 2d 629.

### (e) EVIDENCE ON MOTIONS.

#### Summary Judgments

Oral testimony may be heard on mo-

tions for summary judgment. *Daniels v. Paddock*, 145 M 207, 399 P 2d 740.

(f) INTERPRETERS. The court may appoint an interpreter of its own selection and may fix his reasonable compensation. The compensation shall be paid out of funds provided by law or by one or more of the parties as the court may direct, and may be taxed ultimately as costs, in the discretion of the court.

**History:** En. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

#### Advisory Committee's Note

Source: Fed. R. Civ. P. 43(f), as amended 1966.

**Explanation of change:** This new subdivision authorizes the court to appoint interpreters (including interpreters for the deaf), to provide for their compensation, and to tax the compensation as costs.

**Rule 44. Proof of official record.****(a) AUTHENTICATION.**

(1) Domestic. An official record kept within the United States, or any state, district, commonwealth, territory, or insular possession thereof, or within the Panama Canal Zone, the Trust Territory of the Pacific Islands, or the Ryukyu Islands, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied by a certificate that such officer has the custody. The certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of his office.

(2) Foreign. A foreign official record, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof; or a copy thereof, attested by a person authorized to make the attestation, and accompanied by a final certification as to the genuineness of the signature and official position (i) of the attesting person, or (ii) of any foreign official whose certificate of genuineness of signature and official position relates to the attestation or is in a chain of certificates of genuineness of signature and official position relating to the attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice-consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of the documents, the court may, for good cause shown, (i) admit an attested copy without final certification or (ii) permit the foreign official record to be evidenced by an attested summary with or without a final certification.

**History:** En. Sec. 44, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

**Amendments**

The amendment of September 29, 1967 rewrote all but the first sentence of this rule and divided it into two clauses; in the first sentence, the amendment inserted "kept within the United States \* \* \* Ryukyu Islands" and substituted "by" for "with" before "a certificate that."

**Advisory Committee's Note to September 29, 1967 Amendment**

Source: Fed. R. Civ. P. 44, as amended 1966.

Explanation of change: The new provisions of subdivision (a)(1) on proof of official records kept within the United States are similar in substance to those heretofore appearing in Rule 44. There is a more exact description of the geographical areas covered.

Under subdivision (a)(2) foreign official records may be proved as heretofore, by means of official publications thereof. The rest of subdivision (a)(2) aims to provide greater clarity, efficiency, and flexibility in the procedure for authenticating copies of foreign official records. It is provided that an attested copy may be obtained from any person authorized by the law of the foreign country to make the attestation without regard to whether he is charged with responsibility for maintaining the record or keep it in his custody. The amendment specifically permits use of the chain-certificate method of authentication.

Although the amended rule will generally facilitate proof of foreign official records, it is recognized that in some situations it may be difficult or even impossible to satisfy the basic requirements of the rule. Therefore the final sentence of subdivision (a)(2) provides the court with discretion to admit an attested copy of a



record without a final certification, or an attested summary of a record with or without a final certification. Reasonable

effort must be made to satisfy the basic requirements.

(b) **LACK OF RECORD.** A written statement that after diligent search no record or entry of a specified tenor is found to exist in the records designated by the statement, authenticated as provided in subdivision (a)(1) of this rule in the case of a domestic record, or complying with the requirements of subdivision (a)(2) of this rule for a summary in the case of a foreign record, is admissible as evidence that the records contain no such record or entry.

**History:** En. Sec. 44, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

#### **Amendments**

The amendment of September 29, 1967 rewrote this rule. For text of former rule, see parent volume.

#### **Advisory Committee's Note to September 29, 1967 Amendment**

Source: Fed. R. Civ. P. 44, as amended 1966.

Explanation of change: Subdivision (b) [Rule 44(b)] is accommodated to the changes made in subdivision (a) [Rule 44(a)].

(c) **OTHER PROOF.** This rule does not prevent the proof of official records or of entry or lack of entry therein by any other method authorized by law.

**History:** En. Sec. 44, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

#### **Amendments**

The amendment of September 29, 1967 substituted "authorized by law" for "any applicable statute or by the rules of evidence at common law."

### **Rule 44.1. Determination of foreign law.**

A party who intends to raise an issue concerning the law of a foreign country shall give notice in his pleadings or other reasonable written notice. The court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under Rule 43. The court's determination shall be treated as a ruling on a question of law.

**History:** En. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

#### **Advisory Committee's Note**

Source: Fed. R. Civ. P. 44.1, as adopted 1966.

Explanation of change: This is new and clears up uncertainty as to whether foreign law must be pleaded. Under this rule the notice need not be given in the pleadings.

The rule affords a procedure for raising and determining an issue of foreign law.

It does not require the court to take judicial notice of the foreign law.

The rule appears to be consistent with and complementary to Rule 9(d) and R. C. M. 1947, section 93-501-6.

#### **Power of Court**

Under this section, trial court has power to fashion procedures for determination of whether reciprocity of transfer and reciprocity of inheritance exists between citizens of state and citizens of foreign country. In re Estate of Giurgiu, — M —, 466 P 2d 83.

### **Rule 46. Exceptions unnecessary.**

Except as provided in Rule 52, with respect to findings by the court, formal exceptions to rulings or orders of the court are unnecessary; but

for all purposes it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which he desires the court to take, or his objection to the action of the court and his grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice him.

**History:** En. Sec. 46, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969.

thought by rewriting Rule 46 and Rule 52 the existing confusions can be avoided.

#### Exceptions to Findings and Conclusions

#### Amendments

The amendment of May 21, 1969 inserted "Except as provided in \* \* \* findings by the court" at the beginning of this rule.

#### Advisory Committee's Note to May 21, 1969 Amendment

Explanation of change: The attention of the Committee has been invited to considerable confusion existing under the old wording of this rule, of Rule 52, and of Section 93-5305, R. C. M. 1947, which statute is now being superseded. It is

Effect of rule providing that formal exceptions are unnecessary but requiring aggrieved party to make objections and grounds therefor known to court, when considered with statute providing that no judgment will be reversed on appeal for defects in findings unless exceptions are made to findings complained of in lower court, is that counsel must point out exceptions to findings so that trial court may have opportunity to correct them and upon failure to do so, findings become final and judgment will not be reversed. *Stapp v. Nickels*, 150 M 220, 434 P 2d 141.

### Rule 47. Jurors.

(b) **MANNER OF SELECTION AND ORDER OF EXAMINATION OF JURORS.** From the entire jury panel, an initial panel of 20 jurors shall be called in the first instance, and before any voir dire examination of the jury shall be had. Examination of all jurors in the initial panel shall be completed by the plaintiff before examination by the defendant. If challenges for cause are allowed, an additional juror shall be called from the entire panel immediately upon the allowance of challenge, and the juror called to replace the juror excused for cause shall take the number of the juror who has been excused, to provide a full initial panel of 20 jurors, whose examination shall be completed before any peremptory challenges are made. When the voir dire examination has been completed, each side shall have four peremptory challenges, and they shall be exercised by the plaintiff first striking one, the defendant then striking one, and so on, until each side has exhausted or waived its right. In event one or more alternate jurors are called, the next jurors remaining in the initial panel, if any, shall be called by the clerk to be the alternate jurors. In event all jurors remaining of original initial panel of 20 jurors, including those substituted for those jurors excused for cause, have been subjected to peremptory challenge, then the clerk shall call additional jurors from the remainder of the jury panel to provide alternate jurors who will be subject to challenge as provided by law. In event there is more than one party defendant, and should it appear that each defendant is entitled to peremptory challenges, then the original panel shall be increased to provide four additional jurors for each defendant who is entitled to exercise peremptory challenges. The clerk shall keep a record of the order in which jurors are called, and in event the entire initial panel has not been exhausted by challenges, the court shall excuse

sufficient of the last called jurors until a jury of twelve persons and the determined number of alternates shall remain to make up the trial jury.

**History:** En. Sec. 47, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969.

#### Amendments

The amendment of May 21, 1969 inserted "and the juror called \* \* \* who has been excused" in the second sentence.

#### Advisory Committee's Note to May 21, 1969 Amendment

Explanation of change: In some judicial districts the practice is that the replacement juror takes a new number at the bottom of the list, in others the replacement takes the same number as the juror excused. This amendment expressly adopts the latter and makes the practice uniform throughout the state.

**Rule 50. Motion for a directed verdict and for judgment notwithstanding the verdict.**

(a) **MOTION FOR DIRECTED VERDICT—WHEN MADE, EFFECT.** A party who moves for a directed verdict at the close of the evidence offered by an opponent may offer evidence in the event that the motion is not granted, without having reserved the right so to do and to the same extent as if the motion had not been made. A motion for a directed verdict which is not granted is not a waiver of trial by jury even though all parties to the action have moved for directed verdicts. A motion for a directed verdict shall state the specific grounds therefor. The order of the court granting a motion for a directed verdict is effective without any assent of the jury.

**History:** En. Sec. 50, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

#### Amendments

The amendment of September 29, 1967 added the last sentence, giving effect to an order for directed verdict even without the jury's assent.

#### Advisory Committee's Note to September, 29, 1967 Amendment

Source: Fed. R. Civ. P. 50, as amended 1963.

Explanation of change: The practice, after the court has granted a motion for a directed verdict, of requiring the jury to express assent to a verdict they did not reach by their own deliberations serves no useful purpose and may give offense to members of the jury.

#### Circumstances Under Which Motion Should Be Granted

Denial of motion for directed verdict, made by lessor of destroyed building in suit by lessee claiming that premises were repairable, was cause for reversal where, viewing evidence most favorable to plaintiff lessee and considering as proven everything which evidence tended to prove, reasonable man could come to no other conclusion but that building in-

volved was destroyed. *Solich v. Hale*, 150 M 358, 435 P 2d 883.

#### Granting Motion at End of Plaintiff's Case

Court erred in granting plaintiff's motion for directed verdict before defendant had opportunity to present his case, where defendant was precluded from offering evidence to rebut presumption of negligence raised by plaintiff's case in chief based on doctrine of *res ipsa loquitur*, notwithstanding fact that plaintiff had examined all witnesses to accident during his case in chief. *Baker v. Rental Service Co.*, 150 M 166, 432 P 2d 624.

#### Refusal to Grant Motion

Party who alleges error in refusing his motion under this section had burden of showing that error was in fact committed. *Fuchs v. Huether*, 154 M 11, 459 P 2d 689.

#### Waiver of Jury Trial

Where both parties in jury trial moved for directed verdict at the close of evidence, trial court improperly granted plaintiff's motion, since there were factual issues for jury to decide and since, under this section, a motion for a directed verdict is not a waiver of trial by jury. *Borgmann v. Diehl*, — M —, 473 P 2d 529.



(b) MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT. Whenever a motion for a directed verdict made at the close of all the evidence is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. Not later than 10 days after service of notice of entry of judgment, a party who has moved for a directed verdict may move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his motion for a directed verdict; or if a verdict was not returned such party, within 10 days after the jury has been discharged, may move for judgment in accordance with his motion for a directed verdict. A motion for a new trial may be joined with this motion, or a new trial may be prayed for in the alternative. If a verdict was returned the court may allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as if the requested verdict had been directed. If no verdict was returned the court may direct the entry of judgment as if the requested verdict had been directed or may order a new trial.

Motions provided by this subdivision shall be heard and determined within the times provided by Rule 59 for the hearing and determination of motions for new trial.

**History:** En. Sec. 50, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Sept. 7, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968; amd. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969.

#### **Amendments**

The amendment of September 7, 1965 added the second paragraph.

The amendment of September 29, 1967 substituted the present heading for "Reservation of decision on motion" and, in the second sentence of the first paragraph, substituted "Not later than 10 \* \* \* judgment" for "Within 10 days after the reception of a verdict."

The amendment of May 21, 1969, in the second paragraph, substituted "Rule 59 \* \* \* for new trial" for "Section 93-5606 of the 1947 Revised Codes of Montana in the case of motions for new trial."

#### **Advisory Committee's Note to September 29, 1967 Amendment**

Source: Fed. R. Civ. P. 50, as amended 1963.

**Explanation of change:** A motion for judgment notwithstanding the verdict will not lie unless it was preceded by a motion for a directed verdict made at the close of all the evidence.

This departs from the federal amendment in providing that the time limit for making a motion for judgment n.o.v. is 10 days after service of notice of entry of judgment, rather than 10 days after entry of judgment as provided in the federal amendment. This is consistent with the provisions of Rules 59(b) (time for motion for a new trial) and 52(b) (time for motion to amend findings by the court).

#### **Advisory Committee's Note to May 21, 1969 Amendment**

**Explanation of change:** A housekeeping change to conform with superseding section 93-5606, R. C. M. 1947, by the amendment of Rule 59.

#### **Refusal to Grant Motion**

Party alleging error in refusing his motion under this section had burden of showing that error was in fact committed. *Fuchs v. Huether*, 154 M 11, 459 P 2d 689.

### **(c) MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT—CONDITIONAL RULINGS ON GRANT OF MOTION.**

(1) If the motion for judgment notwithstanding the verdict, provided for in subdivision (b) of this rule, is granted, the court shall also rule on the motion for a new trial, if any, by determining whether it should be granted if the judgment is thereafter vacated or reversed,

and shall specify the grounds for granting or denying the motion for the new trial. If the motion for a new trial is thus conditionally granted, the order thereon does not affect the finality of the judgment. In case the motion for a new trial has been conditionally granted and the judgment is reversed on appeal, the new trial shall proceed unless the supreme court has otherwise ordered. In case the motion for a new trial has been conditionally denied, the respondent on appeal may assert error in that denial; and if the judgment is reversed on appeal, subsequent proceedings shall be in accordance with the order of the supreme court.

(2) The party whose verdict has been set aside on motion for judgment notwithstanding the verdict may serve a motion for a new trial pursuant to Rule 59 not later than 10 days after service of notice of entry of the judgment notwithstanding the verdict.

**History:** En. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

**Advisory Committee's Note**

Source: Fed. R. Civ. P. 50, as amended 1963.

Explanation of change: The procedure

where a party joins a motion for a new trial with his motion for judgment n.o.v., or prays for a new trial in the alternative has often been misunderstood. This amendment summarizes the practice. It does not alter the effects of a jury verdict or the scope of appellate review.

(d) **MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT—DENIAL OF MOTION.** If the motion for judgment notwithstanding the verdict is denied, the party who prevailed on that motion may, as respondent, assert grounds entitling him to a new trial in the event the supreme court concludes that the trial court erred in denying the motion for judgment notwithstanding the verdict. If the supreme court reverses the judgment, nothing in this rule precludes it from determining that the respondent is entitled to a new trial, or from directing the trial court to determine whether a new trial shall be granted.

**History:** En. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

**Advisory Committee's Note**

Source: Fed. R. Civ. P. 50, as amended 1963.

Explanation of change: This subdivision does not attempt a regulation of all aspects of the procedure where the motion

for judgment n.o.v. and any accompanying motion for a new trial are denied, since the problems have not been fully canvassed in the decisions and the procedure is in some respects still in a formative stage. It is, however, designed to give guidance on certain important features of the practice.

## Rule 51. Instructions to jury—Objection.

### Preserving for Review

Appellant who objected to jury instruction but did not specifically object to an interchange of words therein did not preserve review of the interchange. *Cross v. Trethewey*, 471 M 2d 538.

Objections to jury instructions made at trial on grounds of insufficient evidence to support the instructions but not pointing out how the evidence was insufficient, did not preserve the question for review on appeal. *Salvail v. Great Northern Ry. Co.*, 473 P 2d 549.

### Refusal to Give Instructions

Denial of offered instructions which were adaptable to defendant's theory of the case was prejudicial error where such denial deprived him of a possible defense of assumption of risk. *Wollan v. Lord*, 142 M 498, 385 P 2d 102, distinguished in 145 M 486, 488, 402 P 2d 41.

It is not error for the trial judge to refuse to give specific instruction where the subject in question has been adequately covered by other instructions. *Holland v. Konda*, 142 M 536, 385 P 2d 272.

Contention that trial court erred by not instructing jury on defendant's duties toward trespasser was without merit where

such instruction was not offered by plaintiff as required by this section. *Gunderson v. Brewster*, 154 M 405, 466 P 2d 589.

## Rule 52. Findings by the court.

(a) Upon a trial of a question of fact by the court in contested cases, its findings must be given in writing, filed with the clerk, and forthwith served upon all parties.

In granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. Findings of fact and conclusions of law are unnecessary on decisions with respect to motions made under Rules 12 or 56, or any other motion except as provided in Rule 41(b).

**History:** En. Sec. 52, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969.

### Amendments

The amendment of May 21, 1969 deleted the heading "Effect"; rewrote the first portion of the rule, making it a separate first paragraph; and, in the last sentence of the second paragraph, substituted "with respect to" for "of."

### Advisory Committee's Note to May 21, 1969 Amendment

Explanation of change: Sections 93-5302, 93-5305, 93-5306, and 93-5307, R. C. M. 1947, are hereby superseded. The purpose of changing Rule 52, along with the change made in Rule 46, is twofold. It should eliminate the confusions that now exist with respect to the lack of necessity of making exceptions to the rulings and orders of the court, as distinct from the requirement that appropriate exceptions be made to findings of the court on trial of fact issues. In addition, it incorporates in this one rule the existing practice and procedure with respect to exceptions to

findings of the court, and eliminates the necessity of researching for, and referring separately to, controlling statutes, case decisions, and rules, and then trying to correlate all three.

### Appellate Review of Findings

Findings of fact made by trial court will not be disturbed where they are supported by preponderance of evidence. *Western Foundry, Inc. v. Matelich*, 150 M 228, 433 P 2d 789.

### Sufficiency of Findings

Lower court ruling that "no cause of action or claim exists or has been proven" and "the same is hereby dismissed" was sufficient compliance with Rules despite plaintiff's contention that findings of fact and conclusions of law did not meet requirements of Rules. *Mondakota Gas Co. v. Becker*, 151 M 513, 445 P 2d 745.

### References

*Stokes v. Delaney & Sons, Inc.*, 143 M 516, 391 P 2d 698; *Tolson v. Tolson*, 145 M 87, 399 P 2d 754.

(b) In contested cases tried by the court, each party shall request in writing the findings of fact desired by such party either at the close of the evidence, or within such reasonable time thereafter as may be fixed by order of the court, and such requests shall be entered in the minutes of the court. No judgment shall be reversed on appeal for want of findings at the instance of any party who has failed to request such findings in writing as herein specified.

Within 10 days after copy of the finding or findings have been served or within such additional reasonable time thereafter not to exceed 30 days as may be ordered by the court upon good cause shown, a party shall serve on all other parties and file with the court in writing any exceptions which such party may have with respect to the finding or find-



ings, and at the same time may move for an order to amend the findings, or to make additional findings. Within 15 days thereafter the court shall either deny the exceptions or the motion, or grant them in whole or in part, or otherwise amend or revise the original finding or findings, and if the court shall fail to act, the exceptions shall be deemed denied. The failure of the court to act, as well as any action taken by the court shall be deemed excepted to by all parties adversely affected thereby.

**History:** En. Sec. 52, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Aug. 1, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750, Sept. 7, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-7, May 21, 1969, eff. July 1, 1969.

#### Amendments

The amendment of August 1, 1965 inserted "service of notice of" before "entry" in the former first paragraph, for text of which see parent volume.

The amendment of September 7, 1965 added the former second paragraph stating that motions hereunder should be heard and determined within time provided by section 93-5606 for new trial motions.

The amendment of May 21, 1969 deleted the heading "Amendment" and rewrote this rule.

#### Commission Note to August 1, 1965 Amendment

Under Rule 77(d) the prevailing party has 10 days after the entry of judgment to give the unsuccessful parties notice of such entry. The change in 52(b) is an ad-

justment to this provision, and is designed to meet the possibility that the prevailing party is the only party that knows of the entry of the judgment and waits 10 days before giving the unsuccessful party notice of such entry. The provision is similar to that found in Rule 59(b) and (e).

#### Advisory Committee's Note to May 21, 1969 Amendment

See Advisory Committee's Note under Rule 52(a).

#### Amendment of Findings and Judgment

A motion to alter, amend, and supplement findings of fact, conclusions of law and the judgment combined with a motion for a new trial, filed on September 28, 1965, was a motion contemplated by this rule and Rule 59(e) and was not governed by the time limits of section 93-5606. *State ex rel. Rozan v. District Court of Sixteenth Judicial Dist.*, 147 M 532, 416 P 2d 19, 21.

#### References

*Sztaba v. Great Northern Ry. Co.*, 147 M 185, 411 P 2d 379.

### DECISIONS UNDER FORMER LAW

#### Exceptions Required for Reversal

Under former statute which was superseded by this Rule, objections to findings of district court could not be raised for the first time upon appeal. *Rozan v. Rosen*, 150 M 121, 431 P 2d 870.

Mandate of former statute (superseded by this Rule) that findings of district court would not be reviewed on appeal unless exceptions were taken was not changed by fact that counsel on appeal was not same counsel who tried case in district court. *Olsen v. United Benefit Life Ins. Co.*, 150 M 147, 432 P 2d 381.

Rule providing that formal exceptions are unnecessary if aggrieved party makes his objections and grounds therefor known to court and former statute (superseded by this Rule) providing that no judgment will be reversed on appeal for defects in

findings unless exceptions are made in lower court were required to be read together with result that it was necessary for counsel to point out exceptions to findings so that trial court might have opportunity to correct them and failure to do so meant findings became final and judgment would not be reversed. *Stapp v. Nickels*, 150 M 220, 434 P 2d 141.

Under former statute, failure to except to findings of trial court made them final and judgment would not be reversed. *Keller v. Martin*, 153 M 9, 452 P 2d 422.

Under former statute, exceptions had to be made to trial court's defects in findings to give trial court opportunity to correct them or they would become final and not subject to appeal. In re *Estate of Dolezilek*, — M —, 478 P 2d 278.

(c) Either at the time its original findings are filed in writing, or at the time any modifications have been made, the court shall promptly

separately state its conclusions of law thereon, and direct the entry of the appropriate judgment.

History: En. Sup. Ct. Ord. 10750-9,  
May 21, 1969, eff. July 1, 1969.

### Rule 53. Masters.

#### (e) REPORT.

##### Hearing on Report

No hearing is necessary when no objections are made to report by parties after being notified by clerk that special

master has filed his report. *State ex rel. Ross v. District Court, Fourth Judicial District*, 150 M 233, 433 P 2d 778.

## VII. JUDGMENT

### Rule 55. Default.

#### 56. Summary judgment.

#### 59. New trials—Amendment of judgments.

#### 60. Relief from judgment or order.

### Rule 54. Judgments—Costs.

#### (b) JUDGMENT UPON MULTIPLE CLAIMS OR INVOLVING MULTIPLE PARTIES.

##### Amendment To Include Codefendant

Case would be remanded to district court for purpose of amending, by incorporating appropriate terms, judgment which omitted to name defaulting codefendant who was jointly and severally liable on obligation. *White v. Nollmeyer*, 151 M 387, 443 P 2d 873.

unconditional guarantors of a note and to foreclose mortgage securing the note, the holder of the note could properly proceed at its option against either security in the same action. *Bozeman Deaconess Foundation v. Cowgill*, 143 M 98, 387 P 2d 435.

##### Separate Claims on Note and Mortgage Upon default in an action against the

##### References

*State ex rel. Kober and Kyriss v. District Court*, 147 M 116, 410 P 2d 945.

#### (c) DEMAND FOR JUDGMENT.

##### Divorce Proceedings

Where proper notice of hearing on application for judgment of divorce was given defendant in accordance with M. R. Civ. P., Rule 55(b) and no relief different from that demanded in the complaint was granted in violation of this

rule, an appeal on those grounds was dismissed by supreme court upon its own motion where no application to set aside default or judgment was made under Rule 60(b). *Sowerwine v. Sowerwine*, 148 M 195, 418 P 2d 859, 861.

### Rule 55. Default.

#### (a) ENTRY.

##### Answer Filed after Entry by Clerk

Plaintiff was entitled to judgment by default where defendants filed answer after entry of default by clerk and receipt of notice of hearing on motion for default, but before actual hearing on the motion, since entry of default by clerk requires no

notice to party in default, answer was filed after defendants had received notice of motion for default and defendants failed to move to set aside entry of default for "good cause shown" as they were entitled to do under rules. *Sealey v. Majerus*, 149 M 268, 425 P 2d 70.

#### (b) JUDGMENT. Judgment by default may be entered as follows:

##### (1). \* \* \* [Same as parent volume.]

(2) By the Court. In all other cases the party entitled to a judgment by default shall apply to the court therefor; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian, committee, conservator, or other such representative, or guardian ad litem, who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, he (or, if appearing by representative, his representative) shall be served with written notice of the application for judgment at least three days prior to the hearing on such application. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by any statute of the state of Montana.

**History:** En. Sec. 55, Ch. 13, L. 1961; amd. Ord. Sup. Ct. June 1, 1964, eff. July 1, 1964.

#### Amendment

The 1964 amendment inserted "an" before "account" in the final sentence of paragraph (2).

#### Answer Filed after Entry by Clerk

Plaintiff was entitled to judgment by default where defendants filed answer after entry of default by clerk and receipt of notice of hearing on motion for default, but before actual hearing on the motion, since entry of default by clerk requires no notice to party in default, answer was filed after defendants had received notice of motion for default and defendants failed to move to set aside entry of default for "good cause shown" as they were entitled to do under rules. *Sealey v. Majerus*, 149 M 268, 425 P 2d 70.

#### Clerk's Error

Entry of default judgment by clerk of court without requiring affidavit from plaintiff of amount due and owing rendered the judgment voidable but not void. *Interstate Counseling Service v. Emeline*, 144 M 409, 396 P 2d 727, 728. (Dissenting opinion, 144 M 409, 396 P 2d 727, 729.)

Motion to set aside default judgment because of plaintiff's failure to file affidavit of amount due and owing when it requested entry of default judgment was properly denied where defendant permitted judgment to be satisfied from her property, and no reason to avoid the voidable judgment had been presented. *Interstate Counseling Service v. Emeline*, 144 M 409, 396 P 2d 727, 728. (Dissenting opinion, 144 M 409, 396 P 2d 727, 729.)

Under Rule 61 omission of clerk of court to require affidavit of amount due

under this rule before entry of default judgment in favor of plaintiff is not fatal unless refusal to take action with respect to the omission appears to the court inconsistent with substantial justice. *Interstate Counseling Service v. Emeline*, 144 M 409, 396 P 2d 727, 728. (Dissenting opinion, 144 M 409, 396 P 2d 727, 729.)

#### Divorce Proceedings

Where proper notice of hearing on application for judgment of divorce was given defendant in accordance with this rule and no relief different from that demanded in the complaint was granted in violation of M. R. Civ. P., Rule 54(c), an appeal on those grounds was dismissed by the supreme court on its own motion where no application to set aside the default or judgment was made under Rule 60(b). *Sowerwine v. Sowerwine*, 148 M 195, 418 P 2d 859, 861.

#### Ministerial Function

Clerk of court in entering a default judgment is performing a ministerial function and must follow procedures in detail and absolutely. *Interstate Counseling Service v. Emeline*, 144 M 409, 396 P 2d 727, 728. (Dissenting opinion, 144 M 409, 396 P 2d 727, 729.)

#### Nonprejudicial Error

Where record showed that defendant took no action for nearly three months after default judgment had been entered, defendant was not prejudiced by plaintiff's failure to give written notice of application for default judgment as required by paragraph (2) of this rule and district court did not abuse its discretion in denying defendant's motion to vacate the default judgment filed under M. R. Civ. P., Rule 55(c). *Williams v. Superior Homes, Inc.*, 148 M 38, 417 P 2d 92, 94.



**(c) DEFAULT — SETTING ASIDE — EXTENSION OF TIME, ETC.****Answer Filed after Entry by Clerk**

Plaintiff was entitled to judgment by default where defendants filed answer after entry of default by clerk and receipt of notice of hearing on motion for default, but before actual hearing on the motion, since entry of default by clerk requires no notice to party in default, answer was filed after defendants had received notice of motion for default and defendants failed to move to set aside entry of default for "good cause shown" as they were entitled to do under rules. *Sealey v. Majerus*, 149 M 268, 425 P 2d 70.

**Discretion of Court**

Where record showed that defendant took no action for nearly three months after default judgment had been entered, defendant was not prejudiced by plain-

tiff's failure to give written notice of application for default judgment as required by M. R. Civ. P., Rule 55(b)(2), and district court did not abuse its discretion in denying defendant's motion to vacate the default judgment filed under this rule. *Williams v. Superior Homes, Inc.*, 148 M 38, 417 P 2d 92, 94.

**Voidable Judgments**

A default judgment entered prematurely pursuant to this section could not be set aside under M. R. Civ. P., Rule 60(b)(4), since Rule 60(b)(4) applies to void and not voidable judgments. *Sowerwine v. Sowerwine*, 145 M 81, 399 P 2d 233.

**References**

*Kraus v. Treasure Belt Min. Co.*, 146 M 432, 408 P 2d 151.

**DECISIONS UNDER FORMER LAW****Terms of Opening of Default**

Fact that corporate defendant claimed sheriff had never served summons upon the corporation, sheriff did not remember service of the summons, and default was not taken until seven years after the

plaintiff was injured constituted clear, unequivocal and convincing proof to rebut weight accorded sheriff's return of service of process under section 16-2707 to open default judgment. *Sewell v. Beatrice Foods Co.*, 145 M 337, 400 P 2d 892.

**Rule 56. Summary judgment.****(a) FOR CLAIMANT.****Negligence Actions**

Ordinarily, issue of negligence is not susceptible of summary adjudication but where motion for summary judgment be made, burden is on moving party to estab-

lish clearly that there is no factual issue to be determined and opposing party does not have burden of showing prima facie case. *Mally v. Asanovich*, 149 M 99, 423 P 2d 294.

**(b) FOR DEFENDING PARTY.****Denial of Motion**

In suit by guardians of patient for personal injuries sustained when patient was being X-rayed, district court erred in granting defendant-hospital's motion for summary judgment where there was an issue of fact as to whether radiologist was an independent contractor rather than an agent of the hospital. *Kober v. Stewart*, 148 M 117, 417 P 2d 476, 479.

**Support Proceedings**

Defendant was properly granted motion for summary judgment in action to enforce amount agreed upon for support in separation agreement which had been reduced by subsequent court modifications. *Gessell v. Jones*, 149 M 418, 427 P 2d 295.

**References**

*Silloway v. Jorgenson*, 146 M 307, 406 P 2d 167.

**(c) MOTION AND PROCEEDINGS THEREON.** The motion shall be served at least 10 days before the time fixed for the hearing. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Affidavits shall not be considered for any purpose on motion for summary judgment. A summary judgment,

interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

**History:** En. Sec. 56, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965.

#### **Amendment**

The 1965 amendment inserted "answers to interrogatories" in the first sentence.

#### **Commission Note to 1965 Amendment**

The amendment expressly includes "answers to interrogatories" among material which may be considered on motion for summary judgment. This conforms to an amendment to the Federal Rule adopted January 21, 1963, the Federal Rule having inadvertently omitted the phrase. The courts have generally reached by interpretation the result required by the amendment.

#### **Burden of Proof**

The moving party for a summary judgment has the burden of showing the absence of any genuine factual issue. *Kober v. Stewart*, 148 M 117, 417 P 2d 476, 478.

#### **Matters Considered**

While this rule does not mention oral testimony as material to be used at the summary judgment hearing, Rule 43(e) permits the use of oral testimony upon motions, so that oral testimony may be considered upon a motion for summary judgment. *Daniels v. Paddock*, 145 M 207, 399 P 2d 740.

In case in which plaintiff's deposition alone was sufficient to permit the trial judge to determine that the case contained no issue of material fact or controversy relating to the testatrix's incompetency, the trial court was correct in granting summary judgment and had no duty to anticipate possible proof that might have been offered under the pleadings. *Silloway v. Jorgenson*, 146 M 307, 406 P 2d 167.

Where trial court was present during taking of depositions, facts heard by court were properly considered on motion for summary judgment pursuant to this section since oral testimony is properly within matters which court may consider under such motion. *Citizens State Bank v. Duus*, 154 M 18, 459 P 2d 696.

Although fact that both parties moved for summary judgment does not establish that all factual questions have been answered, trial court need only consider evidence and issues presented and has no duty to anticipate possible proof that might be offered under the pleadings. *Faith Lutheran Retirement Home v. Veis*, — M —, 473 P 2d 503.

#### **Pleadings Not Controlling**

On a motion for summary judgment the formal issues presented by the pleadings are not controlling and the court must consider the depositions, answers to interrogatories, and admissions on file, oral testimony and exhibits presented. *Hager v. Tandy*, 146 M 531, 410 P 2d 447.

#### **Principal and Agent**

Purported agent and principal were entitled to summary judgment where plaintiff wholly failed to establish prima facie case of negligence on the part of either even though evidence raised question of fact as to existence of agency since it would be impossible to impute negligence to principal where negligence had not been established against supposed agent. *Knowlton v. Sandaker*, 150 M 438, 436 P 2d 98.

#### **Proof of Issue of Fact**

Motion for summary judgment was properly granted where it was apparent from record that there was no genuine issue as to any material fact, notwithstanding aggrieved party's argument on appeal that had he been allowed to go to trial he would have presented proofs establishing genuine issue of fact, since aggrieved party presented no such proofs at hearing on original motion nor at hearing on motion to vacate judgment. *Brown v. Thornton*, 150 M 150, 432 P 2d 386.

Trial court, in action on farm lease, construing lessor's motion for dismissal as motion for summary judgment, improperly granted summary judgment where lessor failed to sustain burden of showing absence of any genuine issue as to material facts; record on appeal was replete with issues of fact determinable by jury. *Byrne v. Plante*, 154 M 6, 459 P 2d 266.

In an action for injuries allegedly caused by negligence of contractor and his agents, trial court properly granted summary judgment pursuant to this section where record revealed total absence of negligence on part of defendant or its employees and record revealed that nothing defendant did or failed to do was proximate cause of plaintiff's injuries. *Flansberg v. Montana Power Co.*, 154 M 53, 460 P 2d 263.

#### **Purpose**

The general purpose of this rule is to dispose promptly of actions in which there is no genuine issue of fact, thereby eliminating unnecessary trial, delay, and expense. *Silloway v. Jorgenson*, 146 M 307, 406 P 2d 167.

#### **Res Judicata**

Where supreme court affirmed lower



court judgment dismissing complaint for failure to state a claim upon which relief could be granted under Rule 12(b), the judgment was not res judicata as to a second amended complaint under this section where matters outside the pleadings were presented to and not excluded by court. *Rambur v. Diehl Lumber Co.*, 144 M 84, 394 P 2d 745, 749.

### Third Party Complaint

Summary judgment should not have been granted in favor of third party defendant on third party complaint initiated

### Rule 57. Declaratory judgments.

#### References

*Harrer v. Northern Pacific Ry. Co.*, 147 M 130, 410 P 2d 713; *Empire Fire &*

by hospital sued for negligence by minor patient burned by defective television switch while in hospital where third party complaint raised genuine issue of material fact as to whether minor patient was injured solely through negligence of third party defendant who had leased television equipment to hospital. *Crosby v. Billings Deaconess Hospital*, 149 M 314, 426 P 2d 217.

#### References

*Brannon v. Lewis and Clark County*, 143 M 200, 387 P 2d 706.

*Marine Ins. Co. v. Goodman*, 147 M 396, 412 P 2d 569.

### Rule 59. New trials—Amendment of judgments.

(a) **GROUND.** A new trial may be granted to all or any of the parties and on all or part of the issues for any of the reasons provided by the statutes of the state of Montana. On motion for a new trial in an action tried without a jury, the court may take additional testimony, amend the findings of fact and conclusions of law or make new findings and conclusions, set aside, vacate, modify or confirm any judgment that may have been entered or direct the entry of a new judgment.

**History:** En. Sec. 59, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969.

#### Amendments

The amendment of May 21, 1969 made no change in this rule.

#### Appellate Review

In condemnation proceeding, where state appraised land at \$18,000, condemnee appraised it at \$95,000 and jury awarded condemnee \$21,000, granting of new trial because award was inadequate was not such an abuse of trial judge's discretion as to warrant reversal in spite of the fact there was no rebuttal of state's only expert witness. *State Highway Commission v. Greenfield*, 145 M 164, 399 P 2d 989.

#### Inadequacy of Award

Court abused discretion in granting new trial "upon the grounds of insufficiency of the evidence to justify the verdict in that the verdict awarded by the jury to the plaintiff is wholly inadequate" where there was conflict in evidence and where it was question for jury whether injuries suffered by passenger were caused by grossly

negligent operation of car or whether passenger assumed risk of going into car driven by man who had several drinks. *Heen v. Tiddy*, 151 M 265, 442 P 2d 434.

#### Jury Misconduct

New trial was properly granted where foreman of jury made his own investigation at the scene of the accident after hearing testimony and informed the other members of jury, during their deliberation, of the results of his investigation. The foreman was guilty of misconduct upon which verdict could be impeached by affidavits of jurors. *Goff v. Kinzle*, 148 M 61, 417 P 2d 105, 107, distinguished in *Rasmussen v. Sibert*, 153 M 286, 456 P 2d 835.

#### Mistake or Inadvertence

Grant of new trial to permit plaintiff to give additional testimony on issue of damages only was not improper, notwithstanding that ground for relief was mistake or inadvertence and should have been given pursuant to Rule 60(b), where no intervening rights had attached in reliance upon judgment and no actual injustice would ensue. *John J. Ming, Inc. v. District Court*, — M —, 466 P 2d 907.

### DECISIONS UNDER FORMER LAW

#### Right To Appeal

Defendant was entitled to appeal, in spite of time limitation of section 93-5606 for filing bill of exceptions where motion

for new trial was combined with motion to amend findings and request for review of facts, conclusions of law and judgment, since limitation under section



93-5606 did not apply prior to enactment of new rules of civil procedure. *Crissey v. State Highway Commission*, 147 M 374, 413 P 2d 308.

(b) **TIME FOR MOTION.** A motion for a new trial shall be served not later than 10 days after service of notice of the entry of the judgment.

**History:** En. Sec. 59, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969.

#### References

*Clark v. Worrall*, 146 M 374, 406 P 2d 822.

#### Amendments

The amendment of May 21, 1969 made no change in this rule.

(c) **TIME FOR SERVING AFFIDAVITS.** When a motion for new trial is based upon affidavits they shall be served with the motion. The opposing party has 10 days after such service within which to serve opposing affidavits, which periods may be extended for an additional period not exceeding 20 days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits.

**History:** En. Sec. 59, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969.

#### Amendments

The amendment of May 21, 1969 made no change in this rule.

(d) **TIME FOR HEARING ON MOTION.** Hearing on the motion shall be had within 10 days after it has been served, or within 10 days after the party opposing the motion for new trial has served his affidavits as set forth in subparagraph (c) hereinabove except that at any time after the notice of hearing on the motion has been served the court may issue an order continuing the hearing for not to exceed 30 days. In case the hearing is continued by the court, it shall be the duty of the court to hear the same at the earliest practicable date thereafter, and the court shall rule upon and decide the motion within 15 days after the same is submitted. If the court shall fail to rule upon the motion within said time, the motion shall, at the expiration of said period, be deemed denied.

The decision on the motion may be entered in the minutes of the court, or may be made in writing in chambers or in any county in the state where the judge may be, and be filed with the clerk of court in the county where the action is pending. Upon the hearing, reference may be had in all cases to the pleadings and the orders of the court on file, and reference may also be had to any depositions and documentary evidence offered on the trial, and to the proceedings on the trial and, when necessary, reference may be had to the notes of the court reporter.

If the motion is not noticed up for hearing and no hearing is held thereon, it shall be deemed denied as of the expiration of the period of time within which hearing is required to be held under this Rule 59.

**History:** En. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969.

dated former Rules 59(d) and 59(e) as 59(e) and 59(f), respectively.

#### Compiler's Notes

The amendment of Rule 59 by Supreme Court Order No. 10750-9 enacted this subparagraph as Rule 59(d) and design-

#### Advisory Committee's Note to May 21, 1969 Amendment

Explanation of change: Section 93-5606, R. C. M. 1947, is hereby superseded.

There has been some confusion by reason of ambiguous language in section 93-5606, R. C. M. 1947, a hold-over statute from the practice which existed before the rules were adopted, and because of the necessity of researching for, and referring to, the case decisions under the statute spell-

ing out the jurisdictional time limits and the effect thereof. It is felt that by incorporating our practice into this one rule, and eliminating the necessity of referring to statutes and case decisions, that it will be easier for the practitioner to comply.

## DECISIONS UNDER FORMER LAW

### Appellate Review

The appellate court may not disturb the findings of the trial court in ordering a new trial without a showing of abuse of discretion. *Campeau v. Lewis*, 144 M 543, 398 P 2d 960.

### Disqualification of Judge

Section 93-901 does not permit disqualification of a judge pending motion for a new trial under this rule. *State ex rel. Peery v. District Court*, 145 M 287, 400 P 2d 648.

### Judge's Discretion

The jury is delegated the task of finding the facts, but the trial judge has the discretion to prevent a miscarriage of justice by granting a new trial if there is an insufficiency of evidence to support the verdict. *Campeau v. Lewis*, 144 M 543, 398 P 2d 960, explained in *Morris v. Corcoran Pulpwood Co.*, 154 M 468, 465 P 827.

### Purpose of Rule

The purpose of this rule is to give a trial judge power to prevent what he con-

siders a miscarriage of justice. *Campeau v. Lewis*, 144 M 543, 398 P 2d 960.

### Scope

This rule permits the trial judge to order a new trial on his own initiative for the same reasons one could be ordered pursuant to section 93-5603 and is subject to the same interpretations as expressed in previous opinions on motions for new trials before adoption of the rule. *Campeau v. Lewis*, 144 M 543, 398 P 2d 960.

### Time Limits

Combined motion for new trial and to alter, amend and supplement findings of fact, conclusions of law and judgment was not subject to time limits of former section 93-5606 requiring prompt hearing on new trial motion and superseded by this rule. *State ex rel. Rozan v. District Court, Sixteenth Judicial District*, 147 M 532, 416 P 2d 19, 21. See also *Crissey v. State Highway Commission*, 147 M 374, 413 P 2d 308.

### References

*Waite v. Waite*, 143 M 248, 389 P 2d 181; *State ex rel. Wilson v. District Court*, 143 M 543, 393 P 2d 39.

(e) ON INITIATIVE OF COURT. Not later than 10 days after entry of judgment the court of its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the court may grant a motion for a new trial, timely served, for a reason not stated in the motion. In either case, the court shall specify in the order the grounds therefor.

**History:** En. Sec. 59, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968; amd. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969.

### Compiler's Notes

The amendments of Rule 59 by Supreme Court Order No. 10750-9 designated this former Rule 59(d) as Rule 59(e).

### Amendments

The amendment of September 29, 1967 added the second sentence and made changes in phraseology.

The amendment of May 21, 1969 made no change in the wording of this rule.

### Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 59(d), as amended 1966.

Explanation of change: The purpose of this amendment is to make it clear that a court, after notice and opportunity to be heard, may grant a new trial even though a motion for new trial has been made, for a ground not stated in the motion. Some cases have held otherwise.

(f) **MOTION TO ALTER OR AMEND A JUDGMENT.** A motion to alter or amend the judgment shall be served not later than 10 days after the service of the notice of the entry of the judgment, and may be combined with the motion for a new trial herein provided for. This motion shall be heard and determined within the time provided hereinabove with respect to a motion for a new trial.

**History:** En. Sec. 59, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Sept. 7, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969.

#### Compiler's Notes

The amendment of Rule 59 by Supreme Court Order No. 10750-9 designated this former Rule 59(e) as Rule 59(f).

#### Amendments

The amendment of September 7, 1965 added a second paragraph which read: "Motions provided by this subdivision shall be heard and determined within the time provided by Section 93-5606 of the 1947 Revised Codes of Montana in the case of motions for a new trial."

The amendment of May 21, 1969 added "and may be combined with the motion for a new trial herein provided for" to the first sentence; substituted the second sen-

tence for the former second paragraph added in 1965; and made changes in phraseology.

#### Additur

This rule did not give the district court power to order an additur to a condemnation award as a condition of denying motion for new trial. *State Highway Commission v. Schmidt*, 143 M 505, 391 P 2d 692.

#### Time Limit

A motion to alter, amend, and supplement findings of fact, conclusions of law and the judgment, combined with a motion for a new trial filed on September 28, 1965 was a motion contemplated by this rule and Rule 52(b) and was not governed by the time limits of section 93-5606. *State ex rel. Rozan v. District Court of Sixteenth Judicial District*, 147 M 532, 416 P 2d 19, 21.

### Rule 60. Relief from judgment or order.

(b) **MISTAKES—INADVERTENCE—EXCUSABLE NEGLIGENCE—NEWLY DISCOVERED EVIDENCE—FRAUD, ETC.** On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) when a defendant has been personally served, whether in lieu of publication or not, not more than 60 days after the judgment, order or proceeding was entered or taken, or, in a case where notice of entry of judgment is required by Rule 77(d), not more than 60 days after service of notice of entry of judgment. When from any cause the summons in an action has not been personally served on the defendant, the court may allow, on such terms as may be just, such defendant or his legal representative, at any time within 180 days after the rendition of any judgment in such action, to



answer to the merits of the original action. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as may be required by law, or to set aside a judgment for fraud upon the court.

**History:** En. Sec. 60, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Aug. 1, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

#### Amendments

The amendment of August 1, 1965 substituted "within 60 days when a defendant has been personally served, whether in lieu of publication or not, calculated from the date of service of notice of entry of the judgment or order or action taken in the proceeding" for "not more than one year after the judgment, order or proceeding was entered or taken" after "for reasons (1), (2), and (3)" in the second sentence; and inserted the third sentence.

The amendment of September 29, 1967 rewrote the second sentence; and substituted "required" for "provided" in the last sentence.

#### Commission Note to August 1, 1965 Amendment

The purpose of this amendment is to make the Montana practice correspond to practice under the last sentence of R. C. M. 1947, § 93-3905 (which was repealed with the adoption of the Rules of Civil Procedure), as construed in *Smith v. Collis*, 42 Mont. 350, 365-370 (1910). The time within which the motion may be made is shortened, but considered adequate.

#### Advisory Committee's Note to September 29, 1967 Amendment

Source: None.

The federal rule measures the time for the motion for reasons (1), (2), and (3) from time the "judgment, order, or proceeding was entered or taken." The Montana rule measures the time from the "date of service of entry of the judgment or order or action taken"; but Rule 77(d), requiring notice of entry, is confined to judgments in actions in which an appearance has been made. This amendment, using the federal rule language adjusted to the requirements of Montana Rule 77(d), is for the purpose of avoiding ambiguity and litigation as to what, if any, time limit is imposed in cases of orders, and proceedings, and judgments where no appearance has been made.

#### Change of Counsel

Motion to have judgment vacated as to date and redated so as to permit moving

party to file exceptions to findings or take other steps counsel deemed necessary for protection of client was improperly denied, and was abuse of discretion where moving party had inadequate time in which to obtain present counsel when conflict of interest arose with prior counsel. *Schmidt v. Lloyd*, 152 M 158, 447 P 2d 485.

#### Discretion of Court

Where record showed that defendant took no action for nearly three months after default judgment had been entered, defendant was not prejudiced by plaintiff's failure to give written notice of application for default judgment as required by M. R. Civ. P., Rule 55(b)(2), and district court did not abuse its discretion in denying defendant's motion to vacate the default judgment under M. R. Civ. P., Rule 55(c). *Williams v. Superior Homes, Inc.*, 148 M 38, 417 P 2d 92, 94.

Slight abuse of discretion in refusing to set aside default judgment for "mistake, inadvertence, surprise, or excusable neglect" is sufficient to justify reversal, and when motion to vacate default judgment is supported by showing which leaves court in doubt or upon which reasonable minds might reach different conclusions, the doubt should be resolved in favor of the motion. *Uffelman v. Labbit*, 152 M 238, 448 P 2d 690.

#### Excusable Neglect

Defendant's contention that "personal problems drove all thought of lesser problems from his mind" was not sufficient to set aside a default judgment under subsection 1 of this section. *Dudley v. Stiles*, 142 M 566, 386 P 2d 342.

Grant of new trial pursuant to Rule 59(a) to permit plaintiff to give additional testimony on damages that had been omitted by excusable neglect was not improper, notwithstanding that such relief should have been given under this section, where no intervening rights had attached in reliance upon judgment and no actual injustice would ensue. *John J. Ming, Inc. v. District Court*, — M —, 466 P 2d 907.

#### Judgment Obtained by Fraud

Court of equity has inherent power, independent of statute, to vacate judgment obtained by fraud in violation of last sentence of Rule 60(b) even though party seeking relief was not necessary party in original action and motion to vacate was

not made within liberal time limits prescribed by rule but was nevertheless timely considering that aggrieved party engaged attorney to file motion to vacate within thirty days after discovery of existence of judgment. *Selway v. Burns*, 150 M 1, 429 P 2d 640.

In quiet title action, district court properly denied motion to set aside default decree where moving party had no color of title; under this section default judgment will be set aside for excusable neglect only if movant is able to show good defense on merits. *Diamond Investment Co. v. Geagan*, 154 M 122, 460 P 2d 760.

#### Mistake of Law

Mistaken belief of party, against whom default judgment was taken, as to legal effect of contract with adverse party was mistake of law, rather than mistake of fact, and was not such a "mistake" as would support vacating the default. *Uffleman v. Labbit*, 152 M 238, 448 P 2d 690.

#### Probate Matters

Final decree of distribution and discharge in probate will not be set aside on ground of inadvertence or fraud either under statute or Rule 60(b) in absence of manifest abuse of court's discretion in case where moving party had every opportunity to protect his claim in probate and failed to do so. *Werning v. McFarland*, 149 M 137, 423 P 2d 851.

#### Scope of Rule

Contention that default judgment was erroneous on its face and should be set

aside because the judgment and an exhibit attached to the complaint contained inaccurate and erroneous language was outside scope of rule and could not be raised thereunder. *Uffleman v. Labbit*, 152 M 238, 448 P 2d 690.

#### Voidable Judgment

This rule does not apply to voidable judgments. *Interstate Counseling Service v. Emeline*, 144 M 409, 396 P 2d 727, 728. (Dissenting opinion, 144 M 409, 396 P 2d 727, 729.)

This rule has no application to prematurely entered default judgments since it applies to void and not voidable judgments. *Sowerwine v. Sowerwine*, 145 M 81, 399 P 2d 233.

#### Waiver of Right to Relief

Where proper notice of hearing on application for judgment of divorce was given defendant in accordance with M. R. Civ. P., Rule 55(b) and no relief different from that demanded in the complaint was granted in violation of Rule 54(c), an appeal on those grounds was dismissed by the supreme court on its own motion where no application to set aside the default or judgment was made under this rule. *Sowerwine v. Sowerwine*, 148 M 195, 418 P 2d 859, 861.

#### References

*Kraus v. Treasure Belt Min. Co.*, 146 M 432, 408 P 2d 151; *Wolfe v. Northern Pacific Ry. Co.*, 147 M 29, 409 P 2d 528.

(c) TIME FOR HEARING AND DETERMINING MOTIONS. Motions provided by subdivisions (a) and (b) of this rule shall be heard and determined within the times provided by Rule 59 in the case of motions for new trials and amendment of judgment.

**History:** En. Sup. Ct. Ord. 10750, Sept. 7, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969.

#### Amendments

The amendment of May 21, 1969 substituted "Rule 59" for "section 93-5606 of the 1947 Revised Codes of Montana" and "trials" for "trial"; and added "and amendment of judgment."

#### Rule 61. Harmless error.

##### Clerk's Error

Omission of clerk of court to require affidavit of amount due under Rule 55(b) (1) before entry of default judgment in favor of plaintiff is not fatal unless refusal to take action with respect to the omission appears to the court inconsistent with substantial justice. *Interstate Coun-*

**Advisory Committee's Note to May 21, 1969 Amendment**

Explanation of change: Since section 93-5606, R. C. M. 1947, is being superseded because of changes in Rules 46, 52 and 59, the change in Rule 60(c) is likewise required.

*seling Service v. Emeline*, 144 M 409, 396 P 2d 727, 728. (Dissenting opinion, 144 M 409, 396 P 2d 727, 729.)

#### Contributory Negligence

Submitting issue of contributory negligence to jury was harmless error in light of substantial evidence showing that de-



fendant was not negligent and substantial evidence that even if defendant was negligent plaintiff was not injured in accident or injury was not result of defendant's negligence. *Brown v. Reel*, 148 M 381, 421 P 2d 454.

In a wrongful death action by father of eight and one-half year old boy, who, while riding a bicycle, was struck and killed by automobile, court's instruction that deceased boy was incapable of contributory negligence and court's refusal of defendant's offered instruction on contributory negligence was not reversible error, irrespective of question of boy's capacity, since there was no substantial credible evidence of contributory negligence in fact on part of deceased boy. *Graham v. Rolandson*, 150 M 270, 435 P 2d 263.

#### Joint Enterprise

Court's rulings with respect to issue of joint enterprise, if error, was harmless error, since driver was sole proximate

cause of accident in which passenger suing owner of cattle was injured when car struck cattle on highway. *Ratcliff v. Murphy*, 150 M 31, 430 P 2d 627.

#### Poll of Jury

Lower court abused discretion in granting new trial based solely on ground that it had erred in refusing request for poll of jury since error, if any, was harmless in light of evidence affirmatively showing that verdict was rendered in open court in presence of all counsel, that in response to question by judge, foreman of jury advised him they had agreed upon verdict, and that following reading of verdict signed by foreman, judge inquired of jury if it was true verdict of at least eight of them and jury answered in affirmative. *Martello v. Darlow*, 151 M 232, 441 P 2d 175.

#### References

*Steffes v. Crawford*, 143 M 43, 386 P 2d 842.

### Rule 62. Stay of proceedings to enforce a judgment.

(a) Superseded—M. R. App. Civ. P., Rule 7.

#### Supersession

This section (Sec. 62, Ch. 13, L. 1961), relating to stay of proceedings upon entry

of judgment, is superseded by M. R. App. Civ. P., Rule 7.

(d) Superseded—M. R. App. Civ. P., Rule 7.

#### Supersession

This section (Sec. 62, Ch. 13, L. 1961), relating to stay of proceedings upon ap-

peal, is superseded by M. R. App. Civ. P., Rule 7.

### (e) STAY IN FAVOR OF THE STATE OF MONTANA OR AGENCY THEREOF.

#### Eminent Domain Proceeding

Where state highway commission filed notice of appeal and perfected their appeal after writ of execution under section 93-9918 had issued, the appeal stayed the

judgment although no bond was filed as required by section 93-8011, since under this rule no security was required from the state. *Robertson v. State Highway Commission*, 148 M 275, 420 P 2d 21, 24.

## VIII. PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

Rule 68. Offer of judgment.

### Rule 65. Injunctions.

#### References

*Holtz v. Babcock*, 143 M 341, 389 P 2d 869.

### Rule 68. Offer of judgment.

At any time more than 10 days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to



allow judgment to be taken against him for the money or property or to the effect specified in his offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon judgment shall be entered. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer. When the liability of one party to another has been determined by verdict or order or judgment, but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than 10 days prior to the commencement of hearings to determine the amount or extent of liability.

**History:** En. Sec. 67, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

#### **Amendments**

The amendment of September 29, 1967 added the last sentence.

#### **Advisory Committee's Note to September 29, 1967 Amendment**

Source: Fed. R. Civ. P. 68, as amended 1966.

This logical extension of the concept of offer of judgment is suggested by the

common admiralty practice of determining liability before the amount of liability is determined.

#### **Fraud on Court**

Although proper procedure was followed under rule providing for offer of judgment, conduct of parties in perpetrating fraud on court required that judgment be vacated on motion of aggrieved beneficiary who was not party to suit against estate. *Selway v. Burns*, 150 M 1, 429 P 2d 640.

## **IX. APPEALS**

**Rule 72.** Appeal from a district court to the supreme court.

### **Rule 72. Appeal from a district court to the supreme court.**

When an appeal is permitted by law from a district court to the supreme court of Montana, or in any case where original proceedings are commenced in the supreme court, such appeal or original proceeding shall be taken, perfected, and prosecuted pursuant to the provisions of the Montana Rules of Appellate Civil Procedure and controlling statutes to the extent that they are not superseded by the Montana Rules of Appellate Civil Procedure.

**History:** En. Sec. 71, Ch. 13, L. 1961, amd. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

#### **Amendments**

The 1965 amendment rewrote this section. For previous text, see parent volume.

#### **Advisory Committee's Note**

Subdivision (a) of Rule 41, M. R. App. Civ. P. merely adapts the Montana Rules of Civil Procedure to these Appellate Rules.

**X. DISTRICT COURTS AND CLERKS**

Rule 77. District courts and clerks.

**Rule 77. District courts and clerks.****(b) TRIALS AND HEARINGS—ORDERS IN CHAMBERS.****Time for Hearing**

Notwithstanding that hearing on defendant's motion for summary judgment was held one day prior to scheduled date, such procedure was permissible under this

section since hearing was held with consent of both court and counsel. *Israelson v. Mountain Tractor Co.*, — M —, 467 P 2d 149.

(e) TRANSMITTAL OF FILE ON REMOVAL. Upon being served with a notice of the removal of any state district court action to the district court of the United States, district of Montana, the clerk of such state district court shall promptly deliver to the clerk of court of the district court of the United States, district of Montana, all papers then in the original state court file, or theretofore issued and subsequently file only the notice of removal and such papers as were filed with the notice of removal.

**History:** En. Sup. Ct. Ord. 10750-8, Sept. 10, 1968, eff. Jan. 1, 1969.

**Advisory Committee's Note**

To define procedure and avoid unnecessary duplication of papers in state and fed-

eral court files. The proposed amendment correlates with Rule 10, Revised Rules of Procedure of the United States District Court for the District of Montana effective January 1, 1968.

**XI. GENERAL PROVISIONS**

Rule 86. Effective date—Statutes superseded.

**Rule 81. Applicability in general.****(a) SPECIAL STATUTORY PROCEEDINGS.****Action To Remove Administrator**

In statutory action for removal of administrator for misappropriation of funds of estate, administrator could be examined as adverse witness under Rule 43 notwithstanding provisions of Rule 81. In re

*Estate & Guardianship of Wyman*, 149 M 525, 429 P 2d 629.

**References**

*Stokes v. Delaney & Sons, Inc.*, 143 M 516, 391 P 2d 698.

**(b) APPEALS TO DISTRICT COURTS.****References**

*Stokes v. Delaney & Sons, Inc.*, 143 M 516, 391 P 2d 698.

**(c) RULES INCORPORATED INTO STATUTES.****References**

*Steffes v. Crawford*, 143 M 43, 386 P 2d 842.

Rule 86. Effective date—Statutes superseded.

(a) EFFECTIVE DATE AND APPLICATION TO PENDING PROCEEDINGS. These Rules became effective January 1, 1962. In accordance with Chapter 16, Laws of 1963, proposed amendments to these rules shall be first prepared by the advisory committee, which shall dis-

tribute copies thereof to the bench and resident bar of the state for their consideration and suggestions. Submission of proposed amendments to the court shall be made by the advisory committee only after the advisory committee has considered suggestions received from the bench and bar. Submissions to the court shall be noticed by the court by mailing notice, containing copies of the submitted proposals to all district judges and resident attorneys licensed to practice in the Montana courts as shown by the records of the clerk of the court, and the court will receive written suggestions and objections within the time fixed in the notice, which shall be not less than ninety (90) days thereafter. Oral hearings on proposals will be held only on special order of the court. Amendments adopted by the court will become effective on January 1 unless a different time be fixed in the order.

The court will annually, at least thirty (30) days prior to January 1, cause to be published all amendments to these rules which are to become effective on the succeeding January 1, and transmit the same to all judges and resident lawyers of the state. Such rules as are to become effective at times other than January 1 will be published and transmitted at least thirty (30) days prior to their effective date. These rules and amendments govern all proceedings and actions brought after they take effect, and also all further proceedings in actions then pending, except to the extent that in the opinion of the district court their application in a particular action pending when the rules or amendments take effect would not be feasible, or would work injustice, in which event the procedure existing at the time the action was brought applies.

**History:** En. Sec. 79, Ch. 13, L. 1961; amd. Ord. Sup. Ct. June 1, 1964, eff. July 1, 1964.

#### **Amendment**

The 1964 amendment divided subdivision (a) into two paragraphs; inserted the second, third, fourth, fifth, and sixth sentences of the first paragraph and the first and second sentences of the second paragraph; substituted "These rules and amendments" for "They" at the beginning of the third sentence of the second paragraph; inserted "or amendments" after "particular action pending when the rules" in the latter part of the third sentence of the second paragraph; and substituted "became effective" for "will take effect" in the first sentence of the first paragraph.

#### **Relation Back of Complaint**

Question of relation back of complaint amended after adoption of Rules is governed by provisions of Rules even though action originated prior to effective date of Rules in absence of finding by court having jurisdiction that Rules should not control. *Rozan v. Rosen*, 150 M 121, 431 P 2d 870.

#### **Retroactive Application**

District court had the power to consider motion under procedure that was in

effect when the motion was filed where the court believed application of amended rule would work an injury. *State ex rel. Rozan v. District Court of Sixteenth Judicial District*, 147 M 532, 416 P 2d 19, 21.

Rule 4B(1), M. R. Civ. P., applied to act of alleged malpractice occurring in Montana prior to effective date of the Montana Rules of Civil Procedure and doctor who had not resided in Montana since the effective date of the rules could properly be served with process, under Rule 4D(3), in California. *State ex rel. Johnson v. District Court of Fourth Judicial District*, 148 M 22, 417 P 2d 109, 110.

The giving effect to the service of summons provisions of Montana Rules of Civil Procedure, Rule 4, subd. B, when the operative facts of the case to which the rule applied had taken place prior to the effective date provided in this section, was not a prohibited retroactive application of Rule 4, subd. B, within the meaning of section 12-201. *Weber v. Hydroponics, Inc.*, 226 F Supp 117, 118.

#### **References**

*Steffes v. Crawford*, 143 M 43, 386 P 2d 842.



(b) **STATUTES SUPERSEDED.** Upon the taking effect of these rules or amendments thereto all statutes and parts of statutes in conflict therewith and the statutes listed in Tables B and C are superseded in respect of practice and procedure in the district courts.

**History:** En. Sec. 79, Ch. 13, L. 1961; amd. Ord. Sup. Ct. June 1, 1964, eff. July 1, 1964.

#### Amendment

The 1964 amendment inserted "or amendments thereto" after "these rules"; and made another minor change in phraseology.

**Table A. Special statutory proceedings under Rule 81.**

#### Compiler's Notes

A number of sections referred to in this table have been repealed.

Sections 23-926 to 23-928 were repealed by Sec. 248, Ch. 368, Laws of 1969; for similar provisions, see sec. 23-3316.

Sections 23-2301 to 23-2304 were repealed by Sec. 248, Ch. 368, Laws of 1969; for similar provisions, see secs. 23-4101, 23-4104 to 23-4109.

Section 38-606 was repealed by Sec. 1, Ch. 310, Laws of 1969; for present law, see sec. 69-6401 et seq.

Sections 38-701 to 38-711 were repealed by Sec. 15, Ch. 112, Laws of 1963, Sec. 82, Ch. 266, Laws of 1963, and Sec. 10, Ch. 213, Laws of 1963; for present law, see sec. 80-2404.

Sections 38-801 to 38-819 were repealed by Sec. 82, Ch. 266, Laws of 1963, Sec. 10, Ch. 213, Laws of 1963, and Sec. 101, Ch. 199, Laws of 1965; for present law, see secs. 80-2301 to 80-2312.

Sections 38-1101 to 38-1112 were repealed by Sec. 1, Ch. 230, Laws of 1959, and Sec. 101, Ch. 199, Laws of 1965; for present law, see secs. 80-2501 to 80-2503.

Section 40-3633 was repealed by Sec. 37, Ch. 362, Laws of 1969; for present law, see sec. 40-3664.

Section 66-1004 was repealed by Sec. 43, Ch. 338, Laws of 1969; for present law, see sec. 66-1040.

Sections 69-307 to 69-310 and 69-313 were repealed by Sec. 28, Ch. 264, Laws

of 1955, and Sec. 223, Ch. 197, Laws of 1967; for present provisions, see secs. 69-4301 to 69-4317.

Section 69-522 was repealed by Sec. 223, Ch. 197, Laws of 1967; for present law, see sec. 69-4418.

Section 69-1335 was repealed by Sec. 223, Ch. 197, Laws of 1967; for similar provisions, see secs. 69-4816 and 69-4907.

Section 75-1634 was repealed by Sec. 496, Ch. 5, Laws of 1971; for present law, see sec. 75-8205.

Section 75-2901 was repealed by Sec. 496, Ch. 5, Laws of 1971; for present law, see sec. 75-6303.

Sections 75-3001 and 75-3002 were repealed by Sec. 16, Ch. 262, Laws of 1971.

Sections 80-810 and 80-815 to 80-817 were repealed by Sec. 82, Ch. 206, Laws of 1963, Sec. 242, Ch. 147, Laws of 1963, and Sec. 101, Ch. 199, Laws of 1965; for similar provisions, see sec. 80-2202 et seq.

Sections 80-1002 and 80-1003 were repealed by Sec. 101, Ch. 199, Laws of 1965.

Section 84-5617 was repealed by Sec. 32, Ch. 140, Laws of 1969; for a similar provision, see sec. 84-5606.25.

Section 94-101-1 to 94-101-33 were repealed by Sec. 2, Ch. 196, Laws of 1967; for new law, see secs. 95-2701 to 95-2713, 95-2715, and 95-2716.

Sections 94-901-1 to 94-901-18 were repealed by Sec. 3, Ch. 208, Laws of 1961; for new provisions, see secs. 93-2601-41 to 93-2601-82.

**Table B. List of Rules Superseding Statutes.**

Rule	Statutes Superseded
4D	(R. C. M. 1947, sections) 16-809, 93-3008, 93-3011, 93-3012
41(e)	93-3002
52(a)	93-5302, 93-5303, 93-5411
52(b)	93-5305, 93-5306, 93-5307

59(a), (b), (c), (d) -----93-5605, 93-5606

**History:** En. Sec. 82, Ch. 13, L. 1961; amd. Sec. 3, Ch. 14, L. 1963; amd. Sec. 2, Ch. 190, L. 1963; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965; amd. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969.

**Amendments**

The 1965 amendment added sections 16-809, 93-3008, 93-3011, and 93-3012 to the

list of sections superseded by Rule 4 D; and added section 93-3002 to the list of sections superseded by Rule 41(e).

The 1969 amendment added section 93-5302 to the list of sections superseded by Rule 52(a); inserted sections 93-5305, 93-5306, and 93-5307 as being superseded by Rule 52(b); added section 93-5606 to the list of sections superseded by Rule 59(d).

**Table C. List of Statutes Superseded by Rules.**

Statutes Superseded (R. C. M. 1947, sections)	Rules
93-3002 -----	41(e)
93-3008 -----	4D
93-3011 -----	4D
93-3012 -----	4D
93-5302 -----	52(a)
93-5305 -----	52(b)
93-5306 -----	52(b)
93-5307 -----	52(b)
93-5606 -----	59(d)
16-809 -----	4D

**History:** En. Sec. 83, Ch. 13, L. 1961; amd. Sec. 4, Ch. 14, L. 1963; amd. Sec. 3, ch. 190, L. 1963; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965; amd. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969.

**Amendments**

The 1965 amendment added sections 16-809, 93-3002, 93-3008, 93-3011, and 93-3012 to the table.

The 1969 amendment added sections 93-5302, 93-5305 to 93-5307 and 93-5606 to the table.

**CHAPTER 2901—SUPPORT OF CHILDREN BORN OUT OF WEDLOCK**

**93-2901-1. Obligations of the father.**

**NOTE.**—Uniform State Law. Sections 93-2901-1 to 93-2901-11 constitute the “Uniform Act on Paternity” approved by the National Conference of Commission-

ers on Uniform State Laws and the American Bar Association in 1960 and adopted in substance in Kentucky and Mississippi.

CHAPTER 3001  
MONTANA RULES OF APPELLATE CIVIL PROCEDURE

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**I. APPLICABILITY OF RULES**

**Rule**

1. Scope of rules—From what judgment or order an appeal may be taken.
2. What the court may review on an appeal from a judgment.
3. Suspension of the rules.

**II. APPEALS FROM JUDGMENTS AND ORDERS OF  
DISTRICT COURTS**

4. How taken.
  - (a) FILING THE NOTICE OF APPEAL.
  - (b) JOINT APPEALS.
  - (c) CONTENT OF THE NOTICE OF APPEAL.
  - (d) SERVICE OF NOTICE OF APPEAL.
5. Time for filing notice of appeal.
6. Undertaking for costs on appeal.
  - (a) [FORM OF UNDERTAKING—TIME FOR FILING.]
7. Stay of judgment or order pending appeal.
  - (a) [STAY UPON ENTRY OF JUDGMENT—UNDERTAKING.]
  - (b) [SALE OF PERISHABLE PROPERTY.]
  - (c) [CASES IN WHICH STAY OF PROCEEDINGS NOT ALLOWED.]
8. Sureties and their justification.
  - (a) [LIABILITY OF SURETY—ENFORCEMENT.]
  - (b) [JUSTIFICATION OF SURETIES.]
9. The record on appeal.
  - (a) COMPOSITION OF THE RECORD ON APPEAL.
  - (b) THE TRANSCRIPT OF PROCEEDINGS—DUTY OF APPELLANT TO ORDER—NOTICE TO RESPONDENT IF PARTIAL TRANSCRIPT IS ORDERED—COSTS OF PRODUCING.
  - (c) STATEMENT OF THE EVIDENCE OR PROCEEDINGS WHEN NO REPORT WAS MADE OR WHEN THE TRANSCRIPT IS UNAVAILABLE.
  - (d) AGREED STATEMENT AS THE RECORD ON APPEAL.
  - (e) CORRECTION OR MODIFICATION OF THE RECORD.
10. Transmission of the record.
  - (a) TIME FOR TRANSMISSION—NUMBER OF COPIES OF TRANSCRIPT—DUTY OF APPELLANT.



## **RULES OF APPELLATE CIVIL PROCEDURE**

### **Rule**

- (b) DUTY OF CLERK TO TRANSMIT THE RECORD.
  - (c) EXTENSION OF TIME FOR TRANSMISSION OF THE RECORD—REDUCTION OF TIME.
  - (d) RETENTION OF THE RECORD IN THE DISTRICT COURT BY ORDER OF COURT.
  - (e) STIPULATION OF PARTIES THAT PARTS OF THE RECORD BE RETAINED IN THE DISTRICT COURT.
  - (f) RECORD FOR PRELIMINARY HEARING IN THE SUPREME COURT.
11. Docketing the appeal—Filing of the record.
- (a) DOCKETING THE APPEAL.
  - (b) FILING OF THE RECORD.
  - (c) DISMISSAL FOR FAILURE OF APPELLANT TO CAUSE TIMELY TRANSMISSION OR TO DOCKET APPEAL.
12. Effect of dismissal.
13. Acts of executors, administrators or guardians valid when appointment vacated.
14. Ruling against respondent may be reviewed.
15. Remedial powers of the supreme court.
16. Remittitur must be certified to the clerk of the district court.

## **III. ORIGINAL PROCEEDINGS—EXTRAORDINARY WRITS**

17. Acceptance and manner of conducting.
- (a) WHEN ACCEPTED.
  - (b) HOW COMMENCED AND CONDUCTED.
  - (c) APPLICATIONS—WHEN FILED.
  - (d) APPLICATIONS—WHAT TO CONTAIN.
  - (e) APPLICATIONS—HOW AND WHEN PRESENTED.
  - (f) ISSUANCE OF ALTERNATIVE WRIT OR ORDER TO SHOW CAUSE.
  - (g) BRIEFS.
  - (h) HEARING—WHEN HAD.

## **IV. APPEALS IN FORMA PAUPERIS**

18. Applications and manner of proceeding.
- (a) APPLICATION TO DISTRICT COURT.
  - (b) APPLICATION TO THE SUPREME COURT.
  - (c) FORM OF BRIEFS, APPENDICES AND OTHER PAPERS.

## **V. GENERAL PROVISIONS**

19. Record of commissions and oaths.
- (a) COMMISSIONS AND OATHS.
  - (b) MINUTES OF COURT.

## RULES OF APPELLATE CIVIL PROCEDURE

### Rule

#### 20. Filing and service.

- (a) FILING.
- (b) SERVICE OF ALL PAPERS REQUIRED.
- (c) MANNER OF SERVICE.
- (d) PROOF OF SERVICE.

#### 21. Computation and extension of time.

- (a) COMPUTATION OF TIME.
- (b) EXTENSION OF TIME.
- (c) ADDITIONAL TIME AFTER SERVICE BY MAIL.

#### 22. Motions.

#### 23. Briefs.

- (a) BRIEF OF THE APPELLANT.
- (b) BRIEF OF THE RESPONDENT.
- (c) REPLY BRIEF.
- (d) REFERENCES IN BRIEFS TO PARTIES.
- (e) REFERENCES IN BRIEFS TO THE RECORD.
- (f) REPRODUCTION OF STATUTES, RULES, REGULATIONS, ETC.
- (g) LENGTH OF BRIEFS AND COSTS.
- (h) BRIEFS IN CASES INVOLVING CROSS APPEALS.

#### 24. Brief of an amicus curiae.

#### 25. The appendix to the briefs.

- (a) USE OF AN APPENDIX.
- (b) CONTENTS OF THE APPENDIX.
- (c) ARRANGEMENT OF THE APPENDIX.
- (d) REPRODUCTION OF EXHIBITS.

#### 26. Filing and service of briefs.

- (a) TIME FOR FILING BRIEFS.
- (b) NUMBER OF COPIES TO BE FILED AND SERVED.
- (c) CONSEQUENCES OF FAILURE TO FILE BRIEFS.

#### 27. Form of briefs, the appendix, motions and other papers.

- (a) FORM OF BRIEFS, APPENDICES AND SEPARATE VOLUMES OF EXHIBITS.
- (b) TYPEWRITTEN PAPERS AND MOTIONS.
- (c) FIRST PAGE AND COVER.

#### 28. Prehearing conference.

#### 29. Oral argument.

- (a) NOTICE OF HEARING—POSTPONEMENT.
- (b) TIME ALLOWED FOR ARGUMENT.
- (c) ORDER AND CONTENT OF ARGUMENT.
- (d) CROSS AND SEPARATE APPEALS.

## RULES OF APPELLATE CIVIL PROCEDURE

### Rule

- (e) NONAPPEARANCE OF COUNSEL—FAILURE TO FILE BRIEFS.
  - (f) SUBMISSION ON BRIEFS.
  - (g) USE OF PHYSICAL EXHIBITS AT HEARING—REMOVAL.
30. Entry and notice of orders and judgments.
- (a) ENTRY AND NOTICE.
31. Interest on judgments.
32. Damages for appeal without merit.
33. Costs.
- (a) COSTS ON APPEAL.
  - (b) COSTS OF BRIEFS AND APPENDICES.
  - (c) OTHER COSTS TAXABLE.
  - (d) COSTS IN ORIGINAL PROCEEDINGS.
  - (e) UNNECESSARY COSTS.
  - (f) NOTATION BY CLERK.
34. Petitions for rehearing.
35. Notice and copy of decision—Remittitur—Mandate from United States supreme court.
- (a) NOTICE AND COPY OF DECISION TO BE FURNISHED.
  - (b) REMITTITUR—WHEN ISSUED—WHEN COPY OF OPINION TO ACCOMPANY.
  - (c) MANDATE FROM UNITED STATES SUPREME COURT—PROCEDURE THEREON.
36. Voluntary dismissal.
37. Substitution of parties.
- (a) DEATH OF A PARTY.
  - (b) SUBSTITUTION FOR OTHER CAUSES.
  - (c) PUBLIC OFFICERS—DEATH OR SEPARATION FROM OFFICE.
38. Cases involving constitutional questions where the state is not a party.
39. Calendar—Withdrawal of records.
- (a) PLACING CAUSES UPON CALENDAR.
  - (b) SETTING CAUSES FOR ARGUMENT.
  - (c) ADVANCEMENT OF CAUSES.
  - (d) PERMISSION TO TAKE RECORD FROM CLERK'S OFFICE.
40. Appeals from injunction orders.
41. Statutes and rules amended.



## Rule

## 42. Applicability in general.

- (a) SPECIAL STATUTORY PROCEEDINGS.
- (b) APPEALS TO DISTRICT COURTS.
- (c) RULES INCORPORATED INTO STATUTES.

## 43. Title—Effective date—Statutes superseded.

- (a) TITLE.
- (b) EFFECTIVE DATE AND APPLICATION TO PENDING PROCEEDINGS.
- (c) STATUTES AND RULES SUPERSEDED.

## Appendix of forms.

## Table A. List of statutes and rules superseded or amended.

- B. List of rules of appellate civil procedure superseding, in whole or in part, or amending, statutes and rules.
- C. List of statutes and rules superseded, in whole or in part, or amended, by designated rules of appellate civil procedure.

## I. APPLICABILITY OF RULES

- Rule 1. Scope of rules—From what judgment or order an appeal may be taken.
- 2. What the court may review on an appeal from a judgment.
  - 3. Suspension of the rules.

## Rule 1. Scope of rules—From what judgment or order an appeal may be taken.

These rules govern procedure in appeals in civil cases to the supreme court of Montana from Montana district courts and original proceedings in the supreme court of Montana. The party applying for original relief is known as the petitioner and the adverse party as the defendant. The party appealing is known as the appellant, and the adverse party as the respondent.

A party aggrieved may appeal from a judgment or order, except when expressly made final by law, in the following cases:

(a) From a final judgment entered in an action or special proceeding commenced in a district court, or brought into a district court from another court or administrative body.

(b) From an order granting a new trial; or refusing to permit an action to be maintained as a class action; or granting or dissolving an injunction; or refusing to grant or dissolve an injunction; or dissolving or refusing to dissolve an attachment; from an order changing or refusing to change the place of trial when the county designated in the complaint is not the proper county; from an order appointing or refusing to appoint a receiver, or giving directions with respect to a receivership, or refusing to vacate an order appointing or affecting a receiver; from an order

directing the delivery, transfer, or surrender of property; from any special order made after final judgment; and from such interlocutory judgments or orders, in actions for partition as determine the rights and interests of the respective parties and direct partition to be made. In any of the cases mentioned in this subdivision the supreme court, or a justice thereof, may stay all proceedings under the order appealed from, on such conditions as may seem proper.

(c) From a judgment or order granting or refusing to grant, revoking or refusing to revoke, letters testamentary, or of administration, or of guardianship; or admitting or refusing to admit a will to probate, or against or in favor of the validity of a will, or revoking or refusing to revoke the probate thereof; or against or in favor of setting apart property, or making an allowance for a widow or child; or against or in favor of directing the partition, sale, or conveyance of real property, or settling an account of an executor, or administrator, or guardian; or refusing, allowing, directing the distribution or partition of any estate, or any part thereof, or the payment of a debt, claim, legacy, or distributive share; or confirming or refusing to confirm a report of an appraiser setting apart a homestead.

All questions raised on an order overruling a motion for a new trial or on an order changing or refusing to change the place of trial under R. C. M. 1947, section 93-2906 subdivisions 2, 3 or 4 thereof may be raised and reviewed on an appeal from the judgment.

**History:** En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

#### Amendments

The amendment of September 29, 1967, in clause (b), inserted "or refusing to permit an action to be maintained as a class action;" near the beginning of the first sentence.

#### Advisory Committee's Note

Section 93-8003, R. C. M. 1947, is restated and clarified. The effect of section 93-8004 (3), referring to "an order changing or refusing to change a place of trial," is limited by providing for appeals from orders re change of venue only in cases where the motion for change is based upon subdivision 1 of section 93-2906.

Since these rules only apply to appeals from district courts to the Montana supreme court, the provisions of sections 93-8001 and 93-8002 are not superseded in so far as they refer to appeals in actions in police or justice's courts: a judgment or order in a civil action in police or justice's courts, except when expressly made final, may be reviewed as prescribed in R. C. M. 1947, sections 93-7901 to 93-7908.

#### Advisory Committee's Note to September 29, 1967 Amendment

Source: None.

This adds to appealable orders an order under Rule 23(c)(1), Montana Rules of Civil Procedure, refusing to permit a class action to be maintained as such. It does not permit appeal from an order permitting a class action to be maintained as such. See Advisory Committee's Note to Rule 23 of the Montana Rules of Civil Procedure.

#### Denial of Change of Venue

Specification of error arising from trial court's order denying motion for change of venue was not properly before supreme court because timely appeal was not made from order as required by rules. *Sealey v. Majerus*, 149 M 268, 425 P 2d 70.

#### Denial of Motion

Where district court exceeded its jurisdiction in denying motion to quash summons and dismiss action where the summons had not been served and returned within the three years required by M. R. Civ. P., Rule 41(e) the order was not appealable under this rule. *State ex rel. Belwin, Inc. v. Davison*, 148 M 345, 420 P 2d 842, 844.

Writ of supervisory control was proper where lessor's motion to dismiss sublessee's action for breach of lease agree-

ment, to which sublessees were not parties, was denied by the district court, the order denying the motion to dismiss not being appealable under this rule. State ex rel. Buttrey Foods, Inc. v. District Court, 148 M 350, 420 P 2d 845, 847.

#### Denial of Writ of Assistance

Although denial of writ of assistance, placing purchaser at sheriff's sale under mortgage foreclosure into possession of lands involved, by district court was appealable under rule either as "an order directing \* \* \* surrender of property" or as "any special order made after final judgment," writ of supervisory control to compel the district court to issue writ of assistance was available as remedy since remedy by appeal was neither speedy nor adequate. State ex rel. Foss v. District Court, Fourth Judicial District, 152 M 73, 446 P 2d 707.

#### Order Denying Summary Judgment

Although order denying summary judgment is nonappealable at time it is made because of its interlocutory character, it is nonetheless reviewable under appellate

rule providing that all nonappealable intermediate orders or decisions properly excepted or objected to which involve merits or necessarily affect judgment are reviewable on subsequent appeal from final judgment. Brown v. Midland Nat. Bank, 150 M 422, 435 P 2d 878.

#### Standing As Aggrieved Party

Appellant, who first raised issue of the zoning classification of property involved in condemnation proceeding, lacked standing as "a party aggrieved" to complain of the state's subsequent emphasis on the zoning of the property as misleading jury into reaching erroneous verdict. State Highway Commission v. Vaughn, — M —, 470 P 2d 967.

#### Writ of Supervisory Control

Although orders of district court striking two defenses from relator's answer and granting plaintiff summary judgment on issue of liability were not directly appealable under this section, writ of supervisory control was available as remedy. State ex rel. Great Falls Nat. Bank v. District Court, 154 M 336, 463 P 2d 326.

### DECISIONS UNDER FORMER LAW

#### Dismissal of Action

An order granting a motion to dismiss was not appealable under former section 93-8003. Payne v. Mountain States Telephone & Telegraph Co., 142 M 406, 385 P 2d 100; Rambur v. Diehl Lumber Co., 143 M 432, 391 P 2d 1.

#### Injunctions and Restraining Orders

Order denying county commissioner's motion to quash temporary injunction against use of real property valuations made by private appraisal group and relied on by reclassification officer appointed by commissioners to determine 1965 tax assessment rolls was appealable under

former section 93-8003. State ex rel. Keast v. Krieg, 145 M 521, 402 P 2d 405, 19 ALR 3d 396.

#### Sustaining of Demurrer

Notwithstanding that former statute providing for appeals gave party against whom demurrer was sustained plain and speedy remedy by appeal, court would not dismiss application for supervisory writ where judgment sustaining demurrer also stayed proceedings and expressly accorded losing party right to apply for supervisory writ. State ex rel. Cave Constr. Co. v. District Court, Third Judicial District, 150 M 18, 430 P 2d 624.

### Rule 2. What the court may review on an appeal from a judgment.

Upon appeal from a judgment, the court may review the verdict or decision, and any intermediate order or decision excepted or objected to within the meaning of Rule 46 of the Montana Rules of Civil Procedure, which involves the merits, or necessarily affects the judgment, except a decision or order from which an appeal might have been taken.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

#### Advisory Committee's Note

This rule incorporates R. C. M. 1947, section 93-8022.

#### Correction of Erroneous Judgment

Case would be remanded to district court for purpose of amending, by incorporating appropriate terms, a judgment which omitted defaulting codefendant who

was jointly and severally liable on obligation. White v. Nollmeyer, 151 M 387, 443 P 2d 873.

#### Denial of Change of Venue

Specification of error arising from trial court's order denying motion for change of venue was not properly before supreme court because timely appeal was not made from order as required by rules. Sealey v. Majerus, 149 M 268, 425 P 2d 70.



**Objections First Raised on Appeal**

In condemnation proceedings by the state highway commission to condemn a right of way for an interstate highway which divided ranch into two large tracts making an underpass necessary, alleged error of trial court in its preliminary order of condemnation of ordering commission at its own expense to install, construct and maintain the underpass on the ground that the commission had previously agreed to install the underpass, could not be raised for the first time on appeal where the question was not raised at the time of the trial in the lower court.

State ex rel. State Highway Commission v. Wheeler, 148 M 246, 419 P 2d 492, 496.

**Order Denying Summary Judgment**

Although order denying summary judgment is nonappealable order at time it is made because of its interlocutory character, it is nonetheless reviewable under appellate rule providing that all nonappealable intermediate orders or decisions properly excepted or objected to which involve merits or necessarily affect the judgment are reviewable on subsequent appeal from final judgment. Brown v. Midland Nat. Bank, 150 M 422, 435 P 2d 878.

**Rule 3. Suspension of the rules.**

In the interest of expediting decision upon any matter before it, or for other good cause shown, the supreme court may, except as otherwise provided in Rule 21(b), suspend the requirements or provisions of these rules on application of a party or on its own motion and may order proceedings in accordance with its direction.

**History:** En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

**Advisory Committee's Note**

This rule is taken from Rule 2 of the Federal Draft. Its purpose is explained by the Federal Advisory Committee's Note. Adjusted to state practice, this purpose is to make clear the power of the supreme court to expedite the deter-

mination of cases of pressing concern to the public or to the litigants by prescribing a time schedule other than that provided by the rules. The rule also contains a general authorization to the supreme court to relieve litigants of the consequences of default where manifest injustice would otherwise result. Rule 21(b) prohibits the supreme court from extending the time for taking appeal.

## II. APPEALS FROM JUDGMENTS AND ORDERS OF DISTRICT COURTS

**Rule 4. How taken.**

5. Time for filing notice of appeal.
6. Undertaking for costs on appeal.
7. Stay of judgment or order pending appeal.
8. Sureties and their justification.
9. The record on appeal.
10. Transmission of the record.
11. Docketing the appeal—Filing of the record.
12. Effect of dismissal.
13. Acts of executors, administrators or guardians valid when appointment vacated.
14. Ruling against respondent may be reviewed.
15. Remedial powers of the supreme court.
16. Remittitur must be certified to the clerk of the district court.

**Rule 4. How taken.**

(a) **FILING THE NOTICE OF APPEAL.** An appeal shall be taken by filing a notice of appeal in the district court. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the supreme court deems appropriate, which may include dismissal of the appeal.

(b) **JOINT APPEALS.** If two or more persons are entitled to appeal from a judgment or order of the district court and their interests

are such as to make joinder practicable, they may file a joint notice of appeal, or may join in appeal after filing separate notices of appeal as a single appellant.

(c) **CONTENT OF THE NOTICE OF APPEAL.** The notice of appeal shall specify the party or parties taking the appeal; and shall designate the judgment or order appealed from. Form 1 in the Appendix of Forms is a suggested form of notice of appeal.

(d) **SERVICE OF NOTICE OF APPEAL.** The clerk of the district court shall serve notice of the filing of a notice of appeal by mailing a copy thereof to counsel of record of each party other than the appellant, or, if a party is not represented by counsel, to the party at his last known address, and shall mail a copy of the notice of appeal to the clerk of the supreme court. The clerk of the district court shall note on each copy served the date on which the notice of appeal was filed. If an appellant is represented by counsel, his counsel shall provide the clerk with sufficient copies of the notice of appeal to permit the clerk to comply with the requirements of this rule. Failure of the clerk to serve notice shall not affect the validity of the appeal. The notice shall be sufficient notwithstanding the death of a party or his counsel. The clerk shall note in the docket the names of the parties to whom he mails copies, with the date of mailing.

**History:** En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

#### **Advisory Committee's Note**

This rule is patterned after Rule 3 of the Federal Draft, but excludes references to criminal cases, habeas corpus proceedings and bankruptcy. Nothing other than the filing of a notice of appeal in the district court is required for the perfecting of an appeal. In the interest of providing the supreme court with prompt

notice that its jurisdiction has been invoked, the rule directs the clerk of the district court to forward a copy of the notice of appeal to the clerk of the supreme court. The requirement that the appellant furnish the clerk with the necessary number of copies of the notice of appeal and that the clerk endorse on each copy served the date on which the notice was filed are for the convenience of the clerk and litigants respectively.

#### **DECISIONS UNDER FORMER LAW**

##### **Service on Respondent**

Where notice of appeal was not served on the respondent party within six months of the date of judgment, the supreme court could not acquire jurisdiction

even though notice was filed with the district court within the statutory period. *Seiffert v. Police Commission of Helena*, 144 M 52, 394 P 2d 172.

##### **Rule 5. Time for filing notice of appeal.**

The time within which an appeal from a judgment or an order must be taken shall be 30 days from the entry thereof, except that in cases where service of notice of entry of judgment is required by Rule 77(d) of the Montana Rules of Civil Procedure the time shall be 30 days from the service of notice of entry of judgment, but if the state of Montana, or any political subdivision thereof, or an officer or agency thereof is a party the notice of appeal shall be filed within 60 days from the entry of the judgment or order or 60 days from the service of notice of the entry of judgment. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 7 days of the date on which the first notice of appeal was filed, or within the time otherwise provided by this rule, whichever period last expires.

The running of the time for filing a notice of appeal is suspended as to all parties by a timely motion filed in the district court by any party pursuant to the Montana Rules of Civil Procedure hereafter enumerated in this sentence, and the full time for appeal fixed by this rule commences to run and is to be computed from mailing by the clerk of notice of the entry of any of the following orders made upon a timely motion under such rules: (1) granting or denying a motion for judgment under Rule 50(b); (2) granting or denying a motion under Rule 52(b) to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; (3) granting or denying a motion under Rule 59 to alter or amend the judgment; (4) denying a motion for a new trial under Rule 59.

Upon showing of excusable neglect, the district court may extend the time for filing the notice of appeal by any party for a period not to exceed 30 days from the expiration of the original time prescribed by this rule.

**History:** En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

#### Amendments

The amendment of September 29, 1967, in the first sentence of the first paragraph, inserted "a judgment or" before "an order"; substituted "except that \* \* \* the time" for "and the time within which an appeal from a judgment must be taken"; deleted "as provided in Rule 77(d) of the Montana Rules of Civil Procedure" after "entry of judgment"; and inserted "or any political subdivision thereof" after "state of Montana."

#### Advisory Committee's Note

This rule is patterned after Rule 4 of the Federal Draft. (Provisions for appeals in bankruptcy, petitions for impeachment, under the Railway Labor Act, under the Interlocutory Appeals Act, and in criminal cases, are omitted.) It materially shortens the time for taking an appeal.

The Federal Draft provides that the notice of appeal shall be filed within 30 days "of the date of the entry of the judgment order appealed from." The change, which measures the time from service of notice of entry of the judgment, is for the purpose of avoiding uncertainty as to what is a judgment and reducing the possibility of lack of knowledge of the entry of the judgment or order.

The provision for added time for appeal by other parties after notice of appeal is filed by one party is new. The Federal Advisory Committee Note explains this as follows: "It not infrequently happens that a party considers himself aggrieved

by the final judgment but is willing to abide by it if it is to be the final result of the action. Such a party should be protected against the possibility that another party may file a final hour appeal and thereby oblige the forbearing party to undergo the expense of an appeal without the opportunity of presenting his own grievance" to the supreme court.

The time limit for taking an appeal would not prevent the taking of an appeal at any time after the entry of the judgment or order and before service of notice of entry.

The final paragraph permits an extension of the time for taking an appeal by the district court "upon a showing of excusable neglect." In view of the ease with which an appeal may be taken—the filing of a simple notice with the clerk of court—and the unlikelihood that there will not be actual notice of the entry of the judgment or order, it would be an extraordinary case which would justify an extension. But the district court should have the authority to extend time in extraordinary cases where injustice would otherwise result. The phrase "by any party" makes it clear that the district court may extend the time allowed for filing a cross or separate appeal after an initial appeal has been filed.

#### Advisory Committee's Note to September 29, 1967 Amendment

Source: None.

Since Rule 77(d), M. R. Civ. P., only requires service of notice of entry of judgment in cases where an appearance has been made, no time appears to be provided for filing notice of appeal from judgments in default cases. This amendment is designed to supply the deficiency.



The addition of the phrase, "or any political subdivision thereof," is added to make it clear that the 60-day provision applies to cities, counties, etc.

### **Rule 6. Undertaking for costs on appeal.**

(a) [Form of undertaking—Time for filing]. Within 10 days after service of notice of appeal an undertaking for costs on appeal shall be filed in the district court, or a deposit of the money in the amount thereof be made with the clerk of the district court to abide the event of the appeal, or the undertaking be waived by the adverse party in writing. The undertaking must be executed on the part of the appellant by at least 2 sureties, or by a corporate surety as may be authorized by law, to the effect that the appellant will pay all damages and costs which may be awarded against him on the appeal, or on the dismissal thereof, not exceeding five hundred dollars. If the undertaking on appeal is not filed within the time specified, or if the undertaking filed is found insufficient, and if the action is not yet docketed with the supreme court, an undertaking may be filed at such time before the action is so docketed as may be fixed by the district court. After the action is so docketed, application for leave to file an undertaking may be made only in the supreme court. The undertaking for costs herein provided may be combined in a single document with a supersedeas bond under Rule 7.

**History:** En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

#### **Advisory Committee's Note**

Rules 7 and 8 of the Federal Draft contain provisions for appeal bonds and the stay of judgments and orders. These provisions are not followed in the rule. Rather Rules 6, 7 and 8 hereof are substituted. These provisions are believed to be more in accord with state practice and to better fit into Montana statutes

than do the provisions of the Federal Draft. This rule supersedes R. C. M. 1947, sections 93-8005, 93-8006, 93-8012, 93-8015, and compares with Federal Rule 73(c) and (e).

The amount of the undertaking has remained at \$300 since 1895, and the rule would increase it to \$500. Also, express provision is made for corporate sureties as may be authorized by law. Such authorization is found in R. C. M. 1947, section 93-8711.

### **Rule 7. Stay of judgment or order pending appeal.**

(a) [Stay upon entry of judgment—Undertaking]. Upon entry of a judgment or order a party may apply to the district court on notice or ex parte for a stay of the execution of the judgment or order. The court in its discretion may grant said stay for such period of time and under such conditions as the court deems proper, including restraining the party from disposing of, encumbering, or concealing his property. Upon service of notice of appeal, if the court has made no such order or the appellant desires a stay for a longer period than ordered, he may present to the district court and secure its approval of a supersedeas bond which shall have such surety or sureties as are required for an undertaking for costs on appeal prescribed by Rule 6(a). The bond shall be conditioned for the satisfaction of the judgment or order in full together with costs, interest, and damages for delay, if for any reason the appeal is dismissed or if the judgment or order is affirmed, and to satisfy in full such modification of the judgment or order and such costs, interest, and damages as the supreme court may adjudge and award. When the judgment or order is for the recovery of money not otherwise secured, the amount of

the bond shall be fixed at such sum as will cover the whole amount of the judgment or order remaining unsatisfied, costs on the appeal, interest, and damages for delay, unless the district court after notice and hearing and for good cause shown fixes a different amount or orders security other than the bond. When the judgment or order determines the disposition of property in controversy as in real actions, replevin, and actions to foreclose mortgages, or when such property is in the custody of the sheriff or when the proceeds of such property or a bond for its value is in the custody or control of the court, the amount of the supersedeas bond shall be fixed at such sum only as will secure the amount recovered for the use and detention of the property, the costs of the action, costs on appeal, interest, and damages for delay. On application, the supreme court in the interest of justice may suspend, modify, restore, or grant any order made under this subdivision.

(b) [Sale of perishable property]. If the judgment or order appealed from directs the sale of perishable property, the district court may order the property to be sold and the proceeds thereof to be deposited, to abide the judgment of the supreme court.

(c) [Cases in which stay of proceedings not allowed]. No stay of proceedings shall be allowed upon a judgment or order which adjudges the defendant guilty of usurping, or intruding into, or unlawfully holding public office, civil or military, within this state; or which grants a writ of mandamus, or of prohibition, against a tribunal, corporation, public officer, or board, commanding certain acts to be done which ought to be done by such tribunal, corporation, public officer, or board, and not involving the payment or allowance of money or its equivalent.

**History:** En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

#### Advisory Committee's Note

This rule supersedes subdivisions (a) and (d) of Rule 62 of the Montana Rules of Civil Procedure. It also supersedes section 93-8013 in so far as applicable to appeals from district courts to the supreme court. However, since these rules do not apply to appeals from police and justices' courts, section 93-8013 is not superseded in so far as it provides that in cases where an undertaking is required on appeal by the provisions of sections 93-7901 to 93-7908, "a deposit in the court below of the amount of the judgment appealed from, and three hundred dollars in addition, shall be equivalent to filing the undertaking; and . . . the undertaking or deposit may be waived by the written consent of the respondent." Also section 93-8014 is superseded, and subdivision (c) of this rule is patterned after the last part of that section.

The provision of this rule that, upon entry of a judgment or order a party may apply to the district court on notice or ex parte for a stay of execution, is designed to afford time to obtain a supersedeas bond during which the status quo is maintained by court order. The power of the supreme court recognized by the last sentence of subdivision (a) supplements the power of the district court.

#### Supersedeas Bond

Failure of defendant to file supersedeas bond pursuant to this section resulted in dismissal of appeals since such bond is only method to stay execution of judgment and after judgment is paid, it passes beyond review. *Gallatin Trust & Savings Bank v. Henke*, 154 M 170, 461 P 2d 448.

An application for reduction in the amount of a supersedeas bond should be submitted to the district court that set the amount. *State ex rel. Adams v. District Court of Ninth Judicial District in and for County of Teton*, — M —, 471 P 2d 537.

### DECISIONS UNDER FORMER LAW

#### Eminent Domain Proceeding

Where state highway commission filed notice of appeal and perfected its ap-

peal after writ of execution under section 93-9918 had issued, the appeal stayed the judgment although no bond was filed as

required by this section, since under the state. *Robertson v. State Highway*  
 Rule 62(e), no security was required from Commission, 148 M 275, 420 P 2d 21, 24.

### Rule 8. Sureties and their justification.

(a) [Liability of surety—Enforcement]. In cases where an undertaking on appeal or supersedeas bond with sureties is required, the provisions of R. C. M. 1947, sections 93-8710 to 93-8715, inclusive, apply. By entering into an undertaking on appeal or supersedeas bond given pursuant to Rules 6 and 7, the surety submits himself to the jurisdiction of the district court and irrevocably appoints the clerk of the district court as his agent upon whom papers affecting his liability on the bond or undertaking may be served. His liability may be enforced on motion without the necessity of any independent action. The motion and such notice of the motion as the district court prescribed may be served on the clerk of that court, who shall forthwith mail copies to each surety whose address is known.

(b) [Justification of sureties]. A party may except to the sufficiency of the sureties to any bond or undertaking mentioned in this rule at any time within 30 days after the filing of such bond or undertaking; and unless they or other sureties, within 20 days after service of notice of such exception, justify before a judge of the district court, or the clerk thereof, upon 5 days' notice to the other parties of the time and place of justification, execution of the judgment or order appealed from is no longer stayed.

**History:** En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

#### Advisory Committee's Note

The provisions of subdivision (a) of the rule with respect to proceedings against sureties is patterned after Rule 8(b) of the Federal Draft. Subdivision (b) of the rule follows the existing Mon-

tana practice provided by R. C. M. 1947, section 93-8013, but the language is changed to avoid confusion where there are cross appeals or mixed forms of relief and to make it clear that either appellant or respondent, or both, may except to the sufficiency of sureties on a bond or undertaking furnished by the other.

### Rule 9. The record on appeal.

(a) COMPOSITION OF THE RECORD ON APPEAL. The original papers and exhibits filed in the district court, the transcript of proceedings, if any, and a certified copy of the docket entries prepared by the clerk of the district court shall constitute the record on appeal in all cases.

(b) THE TRANSCRIPT OF PROCEEDINGS—DUTY OF APPELLANT TO ORDER—NOTICE TO RESPONDENT IF PARTIAL TRANSCRIPT IS ORDERED—COSTS OF PRODUCING. Within 10 days after filing the notice of appeal the appellant shall order from the reporter a transcript of such parts of the proceedings not already on file as he deems necessary for inclusion in the record. In all cases where the appellant intends to urge insufficiency of the evidence to support the verdict, order or judgment in the district court, it shall be the duty of the appellant to order the entire transcript of the evidence. Wherever the sufficiency of the evidence to support a special verdict or answer by a jury to an interrogatory, or to support a specific finding of fact by the trial court, is to be raised on the appeal by the appellant, he shall be under a duty to include in the transcript all evidence relevant to such



verdict, answer or finding. Unless the entire transcript is to be included, the appellant shall, within the time above provided, file and serve on the respondent a description of the parts of the transcript which he intends to include in the record and a statement of the issues which he intends to present on the appeal. If the respondent deems a transcript of other parts of the proceedings to be necessary he shall within 10 days after such filing and service order such parts from the reporter or procure an order from the district court requiring the appellant to so do.

The cost of producing the transcript shall be paid by the appellant, or he shall make satisfactory arrangements with the reporter for the payment of such cost; but, if the appellant considers that any part of the record designated by the respondent for inclusion is unnecessary for the determination of the issues presented, he shall advise the respondent, and the district court may impose upon the respondent the cost of producing any part which it deems unnecessary for the determination of the issues.

The reporter shall certify the correctness of the transcript.

(c) STATEMENT OF THE EVIDENCE OR PROCEEDINGS WHEN NO REPORT WAS MADE OR WHEN THE TRANSCRIPT IS UNAVAILABLE. If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may, within 10 days from the hearing or trial or such time extended as the district court may for good cause shown permit, prepare a statement of the evidence or proceedings from the best available means, including his recollection. The statement shall be served on the respondent, who may serve objections or propose amendments thereto within 10 days after service. Thereupon, the statement and any objections or proposed amendments shall be submitted for settlement and approval to the district judge who handled the proceedings, and as settled and approved shall be included by the clerk of the district court in the record on appeal. A judge may settle and approve such record after he ceases to be a judge. If such judge before the statement is settled and approved dies, is removed from office, becomes disqualified, is absent from the state, or refuses to settle and approve the statement, it shall be settled and approved in such manner as the supreme court may direct.

(d) AGREED STATEMENT AS THE RECORD ON APPEAL. In lieu of the record on appeal as defined in subdivision (a) of this rule, the parties may prepare and sign a statement of the case showing how the issues presented by the appeal arose and were decided in the district court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented. If the statement conforms to the truth, it, together with such additions as the court may consider necessary fully to present the issues raised by the appeal, shall be approved by the district court and shall then be certified to the supreme court as the record on appeal and transmitted thereto by the clerk of the district court within the time provided by Rule 10. Copies of the agreed statement may be filed as the appendix required by Rule 25.

(e) CORRECTION OR MODIFICATION OF THE RECORD. If any difference arises as to whether the record truly discloses what oc-

curred in the district court, the difference shall be submitted to and settled by that court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation, or the district court, either before or after the record is transmitted to the supreme court, on proper suggestion or of its own initiative, may direct that the omission or misstatement be corrected, and if necessary that a supplemental record be certified and transmitted. All other questions as to the form and content of the record shall be presented to the supreme court.

**History:** En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

#### Advisory Committee's Note

This rule is patterned after Rule 10 of the Federal Draft.

Subdivision (a). This subdivision provides for the use of the original trial record as the official record on appeal, and judgment rolls are nowhere provided for in these Rules. This use of the trial record is now provided for in all federal circuit courts.

Subdivision (b). The Federal Advisory Committee's Note states: "The appellant is required to serve a statement of the issues which he intends to present on appeal if only a part of the proceedings is transcribed solely to allow the appellee to determine whether the partial transcript will be adequate for the determination of the issues presented by the appeal. Such a statement is not the equivalent of an assignment of errors, which is nowhere required in the proposed rules, and the statement would not result in limiting the issues on appeal. The precise statement of the issues presented by the appeal is to be made in the brief. An appellee who can show that he was misled by the statement required by this subdivision and in consequence failed to designate for transcription material parts of the reported proceedings may seek relief under subdivision (e) of this rule."

The second and third sentences of this subdivision following the title are added to the Federal Draft to make the duty which rests on the appellant more specific. Also, the second paragraph of this subdivision has been expanded to afford protection to an appellant against payment of costs of a transcript of unnecessary portions of the proceeding ordered by a respondent. And the last paragraph, requiring the reporter to certify the correctness of the transcript, has been added to the Federal Draft.

Subdivision (c). The provision of the Federal Draft for settlement has been expanded, patterned after section 93-5508; also, because memories are short, there has been added a time limit for the preparation of the statement.

Subdivisions (d) and (e) are the same as the provisions of the federal draft, adjusted to the Montana court system.

#### Cost of Transcript

Under rule providing that court "may impose upon the respondent the cost of producing any part of the record which it deems unnecessary for the determination of the issues," court determined that cost of portion of transcript ordered by respondent, which did not bear on any issue presented upon appeal, should be assessed against respondent. *Ratchiff v. Murphy*, 150 M 31, 430 P 2d 627.

### DECISIONS UNDER FORMER LAW

#### Evidence Not in Record

Merits of appeal could not be determined where purported transcript on appeal did not contain certificate of judge that records included in the transcript had been used at the hearing. *Anderson v. Mennie*, 144 M 105, 394 P 2d 853, 854.

#### Late Presentment of Bill

A bill of exceptions presented after the time prescribed in former section 93-5505 was a nullity and could not be considered on appeal. *Anderson v. Mennie*, 144 M 105, 394 P 2d 853, 854.

#### Notice of Appeal

Where appellant sought to amend notice of appeal from a nonappealable order so as to make it an appeal from final judgment, the supreme court acquired no jurisdiction to "allow" such amendment when the statutory provisions for time and manner of appeal were not complied with. *Payne v. Mountain States Telephone & Telegraph Co.*, 142 M 406, 385 P 2d 100.



**Rule 10. Transmission of the record.**

(a) **TIME FOR TRANSMISSION—NUMBER OF COPIES OF TRANSCRIPT—DUTY OF APPELLANT.** The record on appeal, including the transcript necessary for the determination of the appeal, shall be transmitted to the supreme court within 40 days after the filing of the notice of appeal unless the time is shortened or extended by an order entered under subdivision (c) of this rule. Six copies of each transcript must be lodged with the clerk of this court for filing. Promptly after filing the notice of appeal the appellant shall comply with the provisions of Rule 9(b) and shall take any other action necessary to enable the clerk to assemble and transmit the record. If more than one appeal is filed, each appellant shall comply with the provisions of Rule 9(b) and this subdivision, and a single record shall be transmitted within 40 days after the filing of the final notice of appeal.

(b) **DUTY OF CLERK TO TRANSMIT THE RECORD.** When the record is complete for purposes of the appeal, the clerk of the district court shall transmit it to the clerk of the supreme court. The clerk shall number the documents comprising the record and shall transmit with the record a numbered list of the documents, identifying each with reasonable definiteness. Documents in bulky containers and physical exhibits other than documents shall not be transmitted by the clerk unless he is directed to do so by a party or by the clerk of the supreme court. A party must make advance arrangements with the clerk of the district court for the transportation of bulky or weighty exhibits and with the clerk of the supreme court for their receipt. Transmission of the record is effected when the clerk of the district court mails or otherwise forwards the record to the supreme court. The clerk of the district court shall indicate, by endorsement on the face of the record or otherwise, the date upon which it is transmitted to the supreme court.

(c) **EXTENSION OF TIME FOR TRANSMISSION OF THE RECORD—REDUCTION OF TIME.** The district court may extend the time for transmitting the record. The request for extension must be made within the time originally prescribed or within an extension previously granted, and the district court shall not extend the time to a day more than 90 days from the date of filing of the first notice of appeal. If the district court is without authority to grant the relief sought or has denied a request therefor, the supreme court may on motion extend the time for transmitting the record or may permit the record to be transmitted and filed after the expiration of the time allowed or fixed. A motion for an extension of time for transmitting the record made in either court shall show that the inability of the appellant to cause timely transmission of the record is due to causes beyond his control or to circumstances which may be deemed excusable neglect. If a request for an extension of time for transmitting the record has been previously denied, the motion shall set forth the denial and shall state the reasons therefor, if any were given.

The district court or the supreme court may require the record to be transmitted and the appeal to be docketed at any time within the time otherwise fixed or allowed therefor.



(d) **RETENTION OF THE RECORD IN THE DISTRICT COURT BY ORDER OF COURT.** The supreme court may provide by rule or order that a certified copy of the docket entries shall be transmitted in lieu of the entire record, subject to the right of any party to request at any time during the pendency of the appeal that designated parts of the record be transmitted.

If the record is required in the district court for use there pending the appeal, the district court may make an order to that effect, and the clerk of the district court shall retain the record and shall transmit a copy of the order and of the docket entries together with such parts of the original record as the district court shall allow and copies of such parts as the parties may designate.

If the record is retained in the district court by order of either court, the clerk of the district court shall retain it subject to the order of the supreme court, and transmission of the copy of the docket entries shall constitute transmission of the record.

(e) **STIPULATION OF PARTIES THAT PARTS OF THE RECORD BE RETAINED IN THE DISTRICT COURT.** The parties may agree by written stipulation filed in the district court that designated parts of the record shall be retained in the district court unless thereafter the supreme court shall order or any party shall request their transmittal. The parts thus designated shall nevertheless be a part of the record on appeal for all purposes.

(f) **RECORD FOR PRELIMINARY HEARING IN THE SUPREME COURT.** If prior to the time the record is transmitted a party desires to make in the supreme court a motion for dismissal, for a stay pending appeal, for additional security on the undertaking on appeal or on a supersedeas bond, or for any intermediate order, the clerk of the district court at the request of any party shall transmit to the supreme court such parts of the original record as the party shall designate.

**History:** En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

#### **Advisory Committee's Note**

This rule is taken from Rule 11 of the Federal Draft.

Subdivision (a). This subdivision fixes the time for transmission rather than for filing at 40 days after the filing of the notice of appeal, thus enabling the parties to know with certainty precisely when the complete record must be transmitted to the supreme court. The only justification for delay between filing the notice of appeal and the transmission of the record to the supreme court is the time required for securing a transcription of the trial proceedings. If the appellant is prevented from securing the necessary transcript within the 40-day period by circumstances beyond his control, he may seek an extension of time for transmitting the record.

The requirement that the appellant take any other action necessary to enable the clerk to assemble and transmit the record

emphasizes the primary responsibility of the appellant for effecting timely transmission of the record. His responsibilities include, for example, the payment of any required fee or charge.

Subdivision (b). The appellant is allowed 40 days between the filing of the notice of appeal and the transmission of the record in order to allow him to secure the necessary transcript. If the transcript is available sooner, the allowance is unnecessary, and either party may oblige the clerk of the district court to transmit the record forthwith. On the other hand, unless the record contains the necessary transcript, the clerk is not to transmit it.

Subdivision (c). Cause for extension of the time by either the district or the supreme court must be shown. The final sentence permits any party to expedite the appeal in cases in which the record is complete by obtaining an order that the record be transmitted and the appeal docketed at a date earlier than otherwise allowed or fixed.

Subdivision (d). This subdivision permits the record to be retained in the district court by order of the supreme court, or order of the district court subject to the order of the supreme court. Especially in cases where the judgment or order does not dispose of the entire litigation, retention of the record in the district court may be a convenience for counsel and the district court. In some cases there may be no need for the transmission of the record, and the labor and expense of transmission may be saved.

Subdivision (e). This subdivision permits parties to stipulate against transmis-

sion of designated parts of the record free from the fear that a mistake may substantially affect the scope of the appeal. The final sentence makes it clear that a stipulation that designated parts of the record not be transmitted in no way diminishes the record itself. In effect, a party may at any time revoke his stipulation against transmission of parts of the record.

Subdivision (f). The substance of this subdivision was taken from Fed. R. Civ. P., Rule 75(j).

### Rule 11. Docketing the appeal—Filing of the record.

(a) **DOCKETING THE APPEAL.** Within the time allowed or fixed for transmission of the record, the appellant shall pay to the clerk of the supreme court the fee for filing the record on appeal fixed by section 82-503 of the 1947 Revised Codes of Montana, and the clerk shall thereupon enter the appeal upon the docket. If an appellant is authorized to prosecute the appeal without prepayment of fees, the clerk shall enter the appeal upon the docket at or before the time of filing the record. An appeal shall be docketed under the title given to the action in the district court with such addition as is necessary to indicate the identity of the appellant

(b) **FILING OF THE RECORD.** Upon receipt of the record by the clerk of the supreme court following its timely transmittal, and after the appeal has been timely docketed, the clerk shall file the record. The clerk shall immediately give notice to all parties of the date on which the record was filed.

(c) **DISMISSAL FOR FAILURE OF APPELLANT TO CAUSE TIMELY TRANSMISSION OR TO DOCKET APPEAL.** If the appellant shall fail to cause timely transmission of the record or to pay the filing fee if a filing fee is required, any respondent may file a motion in the supreme court to dismiss the appeal. The motion shall be supported by a certificate of the clerk of the district court showing the date and substance of the judgment or order from which the appeal was taken, the date on which the notice of appeal was filed, and the expiration date of any order extending the time for transmitting the record; and by proof that 7 days' notice in writing has been served on the appellant that application will be made for dismissal of the appeal. The clerk shall docket the appeal for the purpose of permitting the court to entertain the motion, without requiring payment of the filing fee, but the appellant shall not be permitted to appear without payment of the fees unless he is otherwise exempt therefrom. Instead of filing a motion to dismiss the appeal, the respondent may cause the record to be transmitted and may docket the appeal, in which event the appeal shall proceed as if the appellant had caused it to be docketed.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

#### Advisory Committee's Note

This rule is patterned after Rule 12 of the Federal Draft, with adjustments to



state practice. The provision of section 82-503 for a fee for filing the "transcript" on appeal will apply to the "record" on appeal pursuant to these rules.

The appellant's responsibility with respect to docketing and filing are specified. The appellant may pay the filing fee at any time after filing the notice of appeal, and it is then the duty of the clerk of the supreme court to enter the appeal on the docket. The appellant's responsibility is

(1) to pay the filing fee at or before the time allowed or fixed for transmission of the record, and (2) to insure that the record is transmitted to the supreme court within the time allowed or fixed for its transmission. The clerk of the supreme court is directed to assign to cases on appeal the title which was used in the district court in the interest of facilitating future reference and citation and location of cases in indexes.

## DECISIONS UNDER FORMER LAW

### Notice of Appeal

Where appellant sought to amend notice of appeal from a nonappealable order so as to make it an appeal from final judgment, the supreme court acquired no jurisdiction to allow such amendment

when the statutory provisions for time and manner of appeal were not complied with. *Payne v. Mountain States Telephone & Telegraph Co.*, 142 M 406, 385 P 2d 100.

### Rule 12. Effect of dismissal.

The dismissal of an appeal is in effect an affirmance of the judgment or order appealed from, unless the dismissal is expressly made without prejudice to another appeal.

**History:** En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

#### Advisory Committee's Note

This rule incorporates R. C. M. 1947, section 93-8020.

### Rule 13. Acts of executors, administrators or guardians valid when appointment vacated.

When the judgment or order appointing an executor, or administrator, or guardian is reversed on appeal, for error, and not for want of jurisdiction of the court, all lawful acts in administration upon the estate performed by such executor, or administrator, or guardian, if he have qualified, are as valid as if such judgment or order had been affirmed.

**History:** En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

#### Advisory Committee's Note

This rule incorporates R. C. M. 1947, section 93-8016.

### Rule 14. Ruling against respondent may be reviewed.

Whenever the record on appeal shall contain any order, ruling, or proceeding of the trial court against the respondent, affecting his substantial rights on the appeal of said cause, together with any required objection or exception of such respondent, the supreme court on such appeal shall consider such orders, rulings, or proceedings, and the objections and exceptions thereto, and shall reverse or affirm the cause on said appeal according to the substantial rights of the respective parties, as shown upon the record. And no cause shall be reversed upon appeal by reason of any error committed by the trial court against the appellant, where the record shows that the same result would have been attained had such trial court not committed an error or errors against the respondent.



**History:** En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

**Advisory Committee's Note**

This rule incorporates R. C. M. 1947,

section 93-8023, but eliminates references to bills of exceptions and statements of the case properly settled because these rules nowhere provide for such bills and statements.

**Rule 15. Remedial powers of the supreme court.**

When the judgment or order is reversed or modified, the supreme court may make complete restitution of all property and rights lost by the erroneous judgment or order, so far as such restitution is consistent with protection of a purchaser of property at a sale ordered by the judgment, or had under process issued upon the judgment, on an appeal from which the proceedings were not stayed; and for relief in such cases the appellant may have his action against the respondent, enforcing the judgment for the proceeds of the sale of the property, after deducting therefrom the expenses of the sale.

**History:** En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

**Advisory Committee's Note**

This rule incorporates R. C. M. 1947,

section 93-8024, substituting "supreme court" for "appellate court" and eliminating the provision for damages when the appeal is made for delay. Rule 32 covers the matter of damages.

**Rule 16. Remittitur must be certified to the clerk of the district court.**

When judgment is rendered upon the appeal, it must be certified by the clerk of the supreme court to the clerk of the district court from which the appeal is taken. The clerk of the district court must enter at length in the records of the court the certificate received. Also, in cases of appeal from a judgment, the clerk must enter a minute of the judgment of the supreme court on the docket against the original entry; and in cases of appeal from an order, he must enter a minute against the entry of the order appealed from, containing a reference to the certificate, with a brief statement that such order has been affirmed, reversed, or modified by the supreme court on appeal.

**History:** En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

**Advisory Committee's Note**

This rule incorporates the substance of

R. C. M. 1947, section 93-8025, but eliminates references to the judgment roll, which is nowhere provided for in these rules.

### III. ORIGINAL PROCEEDINGS—EXTRAORDINARY WRITS

**Rule 17. Acceptance and manner of conducting.**

**Rule 17. Acceptance and manner of conducting.**

(a) **WHEN ACCEPTED.** The supreme court is an appellate court but it is empowered by the constitution of Montana to hear and determine such original and remedial writs as may be necessary or proper to the complete exercise of its jurisdiction. The institution of such original proceedings in the supreme court is sometimes justified by circumstances of an emergency nature, as when a cause of action or a right has arisen under conditions making due consideration in the trial courts and due appeal to this court an inadequate remedy, or when supervision of a trial court other than by appeal is deemed necessary or proper.

(b) HOW COMMENCED AND CONDUCTED. Proceedings commenced in the supreme court originally to obtain writs of habeas corpus, injunction, review, mandate, quo warranto, supervisory control, and other remedial writs or orders, shall be commenced and conducted in the manner prescribed by the Code of Civil Procedure for the conduct of such or analogous proceedings and by these additional rules. All papers filed shall conform to the requirements of Rule 27.

(c) APPLICATIONS—WHEN FILED. The moving party's application shall be filed with the clerk of the supreme court one hour prior to its presentation to the court.

(d) APPLICATIONS—WHAT TO CONTAIN. The application for the issuance of any of the above writs or orders must set forth, in addition to the other requisite matters, the particular questions and issues anticipated or expected to be raised in the proceeding, and also the fact which renders it necessary and proper that the writ should issue originally from the supreme court; the said matters will be taken into consideration by the court in determining the necessity and propriety of accepting jurisdiction and granting the alternative writ or order to show cause. Each application shall also set forth as exhibits, without repetition of title of court and cause, a copy of each judgment, order, notice, pleading, document, proceeding or court minute referred to in the application, or necessary to make out a prima facie case or to substantiate the pleading or conclusion or legal effect. A memorandum of authorities must be filed with the application.

(e) APPLICATIONS—HOW AND WHEN PRESENTED. The supreme court will receive and hear original applications in open court on any day when the court is in session; but at least an hour's prior notice of such presentation shall be given by counsel to the chief justice or acting chief justice. Not over fifteen minutes shall be allowed for the presentation of any such application unless on prior request further time is granted.

(f) ISSUANCE OF ALTERNATIVE WRIT OR ORDER TO SHOW CAUSE. This court will, as promptly as possible after the presentation of an application, either dismiss the same, issue an alternative writ, order to show cause, or such other remedial writ or order as it deems expedient.

(g) BRIEFS. At or before the time set for final hearing, each party shall serve and file his brief in full conformance with Rules 20, 23 and 27, and containing a statement of the facts and of the points of law applicable, with the authorities relied upon.

(h) HEARING—WHEN HAD. Unless otherwise ordered the hearing shall be had at the time fixed for the return. At or prior to said return time the opposing party shall serve and file, without waiver, any and all pleadings and motions desired to be presented, including answer or return, and all issues shall be argued at the hearing, the applicant opening and closing, and the parties being allowed the same time as upon argu-

ment of appeals. If testimony becomes necessary a reference will be ordered.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

### Supreme Court Memorandum

In October, 1969, the Supreme Court issued a Memorandum to Counsel, reading as follows:

"In order to facilitate presentation and our consideration of applications prepared in accordance with Rule 17(d), M. R. App. Civ. P. for an original or remedial writ, in addition to the requirements of the rule, counsel should, if at all possible, bring to this Court the original district court file, together with transcript of any hearing, if the same has been reduced to writing, that has been had involving the matter sought to be inquired into.

"Compliance with this request will be appreciated."

### Advisory Committee's Note

This rule incorporates Montana Supreme Court Rule IV, with changes in subdivisions (e) and (f) designed to recognize that on original applications the court is not limited to the issuance of alternative writs or orders to show cause, but may issue whatever remedial writ or order it deems expedient.

### Alternative Writs

State highway commission, ordered by district court to produce certain appraisals under discovery rules, was entitled to have order reviewed on allegations that order

required production of irrelevant and privileged matter in excess of lower court's jurisdiction, that it was not an appealable order and that commission had no remedy at law, which allegations were sufficient to authorize issuance of alternative writ. State Highway Commission v. District Court, First Judicial District, 149 M 384, 427 P 2d 49.

### Injunction

Supreme court declined jurisdiction in original proceeding seeking injunction restraining defendant school districts from collecting certain fees and levies and requiring students to purchase certain material because no emergency existed, class action could be established in district court and thorough examination into multiple problems presented could not have been achieved. State ex rel. Thompson v. Elementary School Dist. No. 16, Hill County, — M —, 474 P 2d 700.

### Writ of Supervisory Control

Writ of supervisory control to compel dismissal of removal petition that could not be granted even if the facts alleged were proved was a necessary and proper supervision of district court. State ex rel. Arnot v. District Court of First Judicial District In and For County of Lewis and Clark, — M —, 472 P 2d 302.

### References

State ex rel. Buttrey Foods, Inc. v. District Court, 148 M 350, 420 P 2d 845, 847.

## IV. APPEALS IN FORMA PAUPERIS

Rule 18. Applications and manner of proceeding.

### Rule 18. Applications and manner of proceeding.

(a) APPLICATION TO DISTRICT COURT. A party who desires to proceed on appeal in forma pauperis shall file in the district court a motion for leave so to proceed together with an affidavit showing, in the detail prescribed by Form 2 of the Appendix of Forms, his inability to pay the fees and costs of the appeal or to give security therefor, his belief that he is entitled to redress, and a statement of the issues he intends to present on appeal. If the motion is granted, the party may proceed on appeal without further application to the supreme court and without payment of fees or costs or the giving of security therefor. If the motion is denied, the district court shall state the reasons for the denial.

(b) APPLICATION TO THE SUPREME COURT. If the motion for leave to proceed on appeal in forma pauperis is denied by the district court, a motion for leave so to proceed may be filed in the supreme court



within 30 days after entry of the order of denial. The motion shall be accompanied by a copy of the affidavit filed in the district court and of the statement of reasons for denial given by the district court.

(c) **FORM OF BRIEFS, APPENDICES AND OTHER PAPERS.** Parties allowed to proceed in forma pauperis may file briefs, appendices and other papers in typewritten form.

**History:** En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

**Advisory Committee's Note**

This rule is patterned after Rule 23 of the Federal Draft, but omits the last clause of the Federal Draft reading "and

may request that the appeal be heard on the original record without an 'appendix'." This change is made because these rules do not adopt the appendix system of Rule 30 of the Federal Draft. See Rule 25. This rule is believed to be consistent with R. C. M. 1947, section 93-8625.

## V. GENERAL PROVISIONS

- Rule 19. Record of commissions and oaths.  
 20. Filing and service.  
 21. Computation and extension of time.  
 22. Motions.  
 23. Briefs.  
 24. Brief of an amicus curiae.  
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 26. Filing and service of briefs.  
 27. Form of briefs, the appendix, motions and other papers.  
 28. Prehearing conference.  
 29. Oral argument.  
 30. Entry and notice of orders and judgments.  
 31. Interest on judgments.  
 32. Damages for appeal without merit.  
 33. Costs.  
 34. Petitions for rehearing.  
 35. Notice and copy of decision—Remittitur—Mandate from United States Supreme Court.  
 36. Voluntary dismissal.  
 37. Substitution of parties.  
 38. Cases involving constitutional questions where the state is not a party.  
 39. Calendar—Withdrawal of records.  
 40. Appeals from injunction orders.  
 41. Statutes and rules amended.  
 42. Applicability in general.  
 43. Title—Effective date—Statutes superseded.

### Rule 19. Record of commissions and oaths.

(a) **COMMISSIONS AND OATHS.** The commissions and oaths of the justices and the clerk of this court, and the attorney general shall be recorded in the records of this court.

(b) **MINUTES OF COURT.** The minutes of this court shall be approved by the chief justice (or in his absence by the associate justice having the shortest term to serve), and attested by the clerk.

**History:** En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

**Advisory Committee's Note**

This rule incorporates Montana Supreme Court Rule I.

### Rule 20. Filing and service.

(a) **FILING.** Papers required or permitted to be filed must be placed in the custody of the clerk within the time fixed for filing. Filing may be accomplished by mail addressed to the clerk, but filing shall not be

timely unless the papers are actually received within the time fixed for filing. If a motion requests relief which may be granted by a single judge, the judge may permit the motion to be filed with him, in which event he shall note thereon the dates of filing and shall thereafter transmit it to the clerk.

(b) **SERVICE OF ALL PAPERS REQUIRED.** Copies of all papers, including any transcript, filed by any party and not required by these rules to be served by the clerk shall, at or before the time of filing, be served by the party or person acting for him on all other parties to the appeal or review. Service on a party represented by counsel shall be made on counsel.

(c) **MANNER OF SERVICE.** Service may be personal or by mail. Personal service includes delivery of the copy to a clerk or other responsible person at the office of counsel. Service by mail is complete on mailing.

(d) **PROOF OF SERVICE.** Papers presented for filing shall contain acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service and of the names of the persons served, certified by the person who made service. Proof of service may appear on or be affixed to the papers filed. The clerk may permit papers to be filed without acknowledgment of proof of service but shall require such to be filed promptly thereafter.

**History:** En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

**Advisory Committee's Note**

This rule is taken from Rule 25 of the Federal Draft, but the phrase "in-

cluding any transcript" has been added to subdivision (b) to make it clear that copies of any transcript are to be served on all parties. The first paragraph of Montana Supreme Court Rule III is superseded.

**Rule 21. Computation and extension of time.**

(a) **COMPUTATION OF TIME.** In computing any period of time prescribed by these rules, by an order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, Sunday or a legal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

(b) **EXTENSION OF TIME.** The court for good cause shown may upon motion extend the time prescribed by these rules or by its order for doing any act, and may thereby permit an act to be done after the expiration of such time if the failure to act was excusable under the circumstances; but the court may not extend the time for filing a notice of appeal, except as provided in Rule 5.

(c) **ADDITIONAL TIME AFTER SERVICE BY MAIL.** Whenever a party is required or permitted to do any act within a prescribed period after service of a paper upon him and the paper is served by mail, 3 days shall be added to the prescribed period.

**History:** En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

**Advisory Committee's Note**

This rule is patterned after Rule 26 of the Federal Draft. There are omitted provisions of the Federal Draft with respect to petitions for allowance, applica-

tions for permission to appeal, appeals from advisory agencies, and a definition of "legal holiday." A definition of "legal holiday" is contained in R. C. M. 1947, section 19-107.

It is believed that these provisions are consistent with R. C. M. 1947, section 90-407.

**Rule 22. Motions.**

Unless another form is prescribed by these rules, an application for an order or other relief shall be made by filing a motion in writing for such order or relief. The motion shall state with particularity the grounds therefor and shall set forth the order or relief sought. If a motion is supported by briefs, affidavits or other papers, they shall be served and filed with the motion. Motions for procedural orders may be determined ex parte. The supreme court may authorize disposition of motions for procedural orders by a single judge. If a motion seeks dismissal of the appeal or other substantial relief, any party may file an answer in opposition within 7 days after service of the motion, or within such time as the court may direct. Motions, supporting papers and any response thereto may be typewritten.

At the time of filing a motion counsel shall present a proposed order, together with sufficient copies for service upon all counsel of record.

**History:** En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

**Advisory Committee's Note**

This rule supersedes Montana Supreme Court Rule XI. It is patterned after Rule 27 of the Federal Draft, but the last

sentence of the Federal Draft requiring the filing of three copies of motions and supporting papers has been omitted. Also, there has been added as a last paragraph the amendment of the Montana Supreme Court Rule XI, effective January 1, 1965.

**Rule 23. Briefs.**

(a) **BRIEF OF THE APPELLANT.** The brief of the appellant shall contain under appropriate headings and in the order here indicated:

(1) A table of contents, with page references, and a table of cases (alphabetically arranged), statutes and other authorities cited, with references to the pages of the brief where they are cited.

(2) A statement of the issues presented for review.

(3) A statement of the case. The statement shall first indicate briefly the nature of the case and its disposition in the court below, e.g.: "The plaintiff brought this action in the district court to recover damages for the wrongful death of her husband. The jury returned a verdict for the plaintiff. On motion of the defendant the trial judge entered judgment for the defendant n. o. v. on the ground that there was no evidence to support a finding of negligence on the part of the defendant. From this judgment the plaintiff appeals."

There shall follow a statement of the facts relevant to the issues presented for review, with references to the pages of the parts of the record at which material facts appear (see subdivision (e)).



(4) An argument. The argument may be preceded by a summary. The argument shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and pages of the record relied on.

(5) A short conclusion stating the precise relief sought.

(b) BRIEF OF THE RESPONDENT. The brief of the respondent shall conform to the requirements of subdivision (a) (1) to (4), except that a statement of the issues or of the case need not be made unless the respondent is dissatisfied with the statement of the appellant.

(c) REPLY BRIEF. The appellant may file a brief in reply to the brief of the respondent. The reply brief must be confined to new matter raised in the brief of the respondent. No further briefs may be filed except with leave of court.

(d) REFERENCES IN BRIEFS TO PARTIES. Counsel will be expected in their briefs and oral arguments to keep to a minimum references to parties by such formal designations as "appellant" and "respondent." It promotes clarity to use names or descriptive terms such as "the employee," "the injured person," "the taxpayer," etc.

(e) REFERENCES IN BRIEFS TO THE RECORD. Whenever a reference is made in the briefs to the record, the reference must be to particular parts of the record, suitably designated, and to specific pages of each part, e. g., Answer, p. 7; Motion for Summary Judgment, p. 3; Transcript, p. 231. Intelligible abbreviations may be used. If reference is made to an exhibit, reference shall be made to the pages of the transcript on which the exhibit was identified, offered, and received or rejected.

(f) REPRODUCTION OF STATUTES, RULES, REGULATIONS, ETC. If determination of the issues presented requires the study of statutes, rules, regulations, etc., or relevant parts thereof, they may be reproduced in the brief or in an addendum at the end, or they may be supplied to the court in pamphlet form. No such reproduction is required, unless ordered by the supreme court.

(g) LENGTH OF BRIEFS AND COSTS. Except by permission of the court briefs shall not exceed 50 pages of standard typographic printing or 70 pages of printing by any other process of duplicating or copying, exclusive of pages containing the table of contents, tables of citations and any addendum containing statutes, rules, regulations, etc. For purposes of assessing costs under R. C. M. 1947, section 93-8606, reasonable costs shall be limited as follows: For appellant's brief fifty (50) pages; for respondent's brief forty (40) pages; for reply brief fifteen (15) pages. In addition, reasonable costs for briefs shall be limited to \$250 for appellant's brief and \$200 for respondent's brief.

(h) BRIEFS IN CASES INVOLVING CROSS APPEALS. If a cross appeal is filed, the plaintiff in the court below shall be deemed the appellant for the purposes of this rule and Rules 25 and 26, unless the parties otherwise agree or the court otherwise orders. The brief of

the respondent shall contain the issues and argument involved in his appeal as well as the answer to the brief of the appellant.

**History:** En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

the "appendix" system of Rule 30 of the Federal Draft. See Rule 25.

#### **Advisory Committee's Note**

This rule is patterned after Rule 28 of the Federal Draft, adjusted to state practice. The second paragraph of subdivision (c) of the Federal Draft is omitted, since these rules do not adopt

Also, in the Federal Draft, subdivision (f) requires reproduction of statutes, rules, regulations, etc. This has been changed, so that reproduction is permissive, unless ordered by the supreme court.

#### **Rule 24. Brief of an amicus curiae.**

A brief of an amicus curiae may be filed only if accompanied by written consent of all parties, or by leave of court granted on motion. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable. A motion of an amicus curiae for leave to participate in the oral argument will be granted only for extraordinary reasons.

**History:** En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Federal Draft. It follows the practice of a majority of federal circuits in requiring leave of court to file an amicus brief unless the litigants consent to its filing.

#### **Advisory Committee's Note**

This rule is taken from Rule 29 of the

#### **Rule 25. The appendix to the briefs.**

(a) **USE OF AN APPENDIX.** At any time before final decision, the supreme court may order an appendix to any brief. Also, either the appellant or respondent may, if he deems it desirable, prepare, file and serve with his brief an appendix.

(b) **CONTENTS OF THE APPENDIX.** Unless otherwise ordered by the supreme court, an appendix shall contain: (1) the relevant docket entries in the proceeding below; (2) any relevant pleading and relevant portions of the charge, finding and opinion; (3) the judgment, order or decision in question; and (4) such other parts of the record as any party deems it essential for the judges of the court to read in order to decide the issues presented. In designating parts of the record for inclusion in the appendix, the parties shall have regard for the fact that the entire record is always available to the court for reference or examination and shall not engage in unnecessary designation.

(c) **ARRANGEMENT OF THE APPENDIX.** At the beginning of the appendix there shall appear a chronological list of the parts of the record which it contains. Each part of the record shall be listed by the descriptive title given to that part by the reference made to it in the briefs. The page or pages of the appendix at which each part of the record thus listed appears shall be set out opposite each listing in a column at the right, so as to permit immediate location in the appendix of the parts of the record referred to in the briefs and contained in the appendix.

The relevant docket entries in the proceeding below shall follow the list of contents. Thereafter, the parts of the record shall be set out in

chronological order. The original paging of each part of the record set out in the appendix shall be indicated by placing in brackets the number of the original page at the place where that page begins. Omissions in the text of papers or of testimony must be indicated by asterisks. A question and its answer may be contained in a single paragraph.

(d) **REPRODUCTION OF EXHIBITS.** Exhibits may be contained in a separate volume, suitably indexed.

**History:** En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

**Advisory Committee's Note**

Rules 30 and 31 of the Federal Draft, require post-brief appendices, unless dispensed with by court rule or order. The

rule does not follow the Federal Draft at this point. Rather, under this rule the supreme court may order an appendix, or either party may if he chooses use an appendix. When an appendix is used it is to be filed and served with the brief.

**Rule 26. Filing and service of briefs.**

(a) **TIME FOR FILING BRIEFS.** The appellant shall serve and file his brief within 30 days after the date on which the record is filed. The respondent shall serve and file his brief within 30 days after service of the brief of the appellant. The appellant may serve and file a reply brief within 14 days after service of the brief of the respondent, but, except for good cause shown, a reply brief must be served and filed at least 3 days before argument.

(b) **NUMBER OF COPIES TO BE FILED AND SERVED.** Ten copies of each brief shall be filed with the clerk of the supreme court unless otherwise ordered by the court, and one copy of each brief shall be served on counsel for each party separately represented. The clerk will not accept a brief for filing unless it is accompanied by acknowledgment or proof of service as required by Rule 20.

(c) **CONSEQUENCES OF FAILURE TO FILE BRIEFS.** If an appellant fails to file his brief within the time provided by this rule, or within the time extended, a respondent may move for dismissal of the appeal. If a respondent fails to file his brief, he will not be heard at oral argument except by permission of the court.

**History:** En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

**Advisory Committee's Note**

This rule is patterned after Rule 31 of the Federal Draft.

Subdivision (a) follows the time fixed for filing of briefs provided in the Federal Draft, and that is the time now allowed by a majority of the federal circuits.

Subdivision (b) of the Federal Draft is omitted, since it provides a post-brief time for filing the appendix. Under Rule

25 an appendix must be filed and served with the brief, unless otherwise ordered by the supreme court.

Subdivision (b) of this rule is patterned after subdivision (c) of the Federal Draft. The number of copies to be filed and served, however, are adjusted to fit state practice and the present requirement of Montana Supreme Court Rule II.

Subdivision (c) of this rule follows subdivision (d) of Rule 31 of the Federal Draft.

**Rule 27. Form of briefs, the appendix, motions and other papers.**

(a) **FORM OF BRIEFS, APPENDICES AND SEPARATE VOLUMES OF EXHIBITS.** Briefs, appendices and separate volumes of exhibits may be produced by standard typographic printing or by any



duplicating or copying process capable of producing a clear black image on white paper. Typewritten copies of briefs, appendices and separate volumes of exhibits may not be submitted without permission of the chief justice of the supreme court, except in behalf of parties allowed to proceed in forma pauperis. Pica solid is the smallest letter and the most compact form of composition allowed for all printed matter. Briefs, appendices and separate volumes of exhibits shall be on white uncalendered book paper in book or booklet form. If produced by the standard typographic printing process, the pages shall be ten inches long and seven inches wide, with a margin on the outer edge not less than one inch wide and on the inner edge not less than two inches wide. If produced by a duplicating or copying process, the pages shall be eleven inches long and eight and one-half inches wide, with a margin on the outer edge not less than one inch wide and on the inner edge not less than two inches wide. The pages shall be fastened at the side and numbered at the top.

(b) **TYPEWRITTEN PAPERS AND MOTIONS.** Papers not required to be produced in a manner prescribed by subdivision (a) of this rule shall be plainly and legibly written by a typewriter with a new black ribbon and new black carbon paper of good grade, in double spacing, except that quotations may be single spaced, on one side only of white typewriter paper, eight and one-half inches wide and thirteen inches long, numbered at the bottom, with a ruled margin of one and one-half inches on the left-hand side of the page and one inch on the right-hand side, and numbered lines, not more than thirty-two lines to the page. The pages shall be bound at the left-hand side into volumes not containing more than two hundred fifty pages; provided, however, that if the pages number fifty or less they may be bound at the top.

In collating typewritten papers the copies shall not be mixed, but each copy shall consist throughout of uniform pages. Each page of every copy shall be opaque and each line of print thereon plainly legible. The difficulty of examining transparent, illegible and nonuniform typewritten copies has become so great that this rule will be strictly applied and papers not complying with it will not be received.

(c) **FIRST PAGE AND COVER.** All papers shall be bound in cardboard or pasteboard covers, unless bound at the top under subdivision (b) of this rule, in which case they may be bound in cover paper. On the first page and cover of all papers must be stated the title of this court, the title of the case as in the court below, adding to the words "Plaintiff" and "Defendant," the words "Appellant" and "Respondent" as the case may require, the names of counsel for appellant and respondent, the title of the papers, as "Appellant's Brief," "Appendix to Appellant's Brief," etc., and the venue from which the appeal is taken.

**History:** En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

**Advisory Committee's Note**

Rule 32 of the Federal Draft is adjusted to conform to the paper and forms

prescribed for state practice and Montana Supreme Court Rule II, as amended effective January 1, 1965. The provisions requiring the use of pica type and two typewritten originals are stricken as being obsolete or unnecessary.

**Rule 28. Prehearing conference.**

The court may direct the attorneys for the parties to appear before the court or a judge thereof for a prehearing conference to consider the simplification of the issues and such other matters as may aid in the disposition of the proceedings by the court. The court or judge shall make an order which recites the action taken at the conference and the agreements made by the parties as to any of the matters considered and which limits the issue to those not disposed of by admission or agreements of counsel, and such order when entered controls the subsequent course of the proceedings, unless modified to prevent manifest injustice.

**History:** En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966. **Advisory Committee's Note** This rule is taken from Rule 33 of the Federal Draft.

**Rule 29. Oral argument.**

(a) **NOTICE OF HEARING—POSTPONEMENT.** The clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the hearing must be made by motion filed reasonably in advance of the date fixed for hearing.

(b) **TIME ALLOWED FOR ARGUMENT.** Upon oral argument of an appeal or original proceeding, 40 minutes will be allowed appellant or applicant and 30 minutes to respondent. If counsel is of the opinion that additional time is necessary for the adequate presentation of his argument, he may request such additional time as he deems necessary by motion filed reasonably in advance of the date fixed for hearing. A party is not obliged to use all of the time allowed, and the court may terminate the argument whenever in its judgment further argument is unnecessary.

(c) **ORDER AND CONTENT OF ARGUMENT.** The appellant or applicant is entitled to open and conclude the argument. The opening argument shall include a fair statement of the case, and the closing argument shall be limited to rebuttal of respondent's argument. Counsel will not be permitted to read at length from briefs, records or authorities.

(d) **CROSS AND SEPARATE APPEALS.** A cross or separate appeal shall be argued with the initial appeal at a single hearing, unless the court otherwise directs. If a case involves a cross appeal, the plaintiff in the action below shall be deemed the appellant for the purpose of this rule unless the parties otherwise agree or the court otherwise directs. If separate appellants support the same argument, care shall be taken to avoid duplication of argument at the hearing.

(e) **NONAPPEARANCE OF COUNSEL—FAILURE TO FILE BRIEFS.** If counsel for a party fails to appear to present argument, the court may hear argument on behalf of a party whose counsel is present, and the case will be decided on the briefs and the argument heard. If no counsel appear for any party, the case will be decided on the briefs unless the court shall otherwise order.

(f) **SUBMISSION ON BRIEFS.** By agreement of the parties, a case may be submitted for decision on the briefs, but the court may direct that the case be argued.

**(g) USE OF PHYSICAL EXHIBITS AT HEARING—REMOVAL.**

If physical exhibits other than documents are to be used at the hearing, counsel shall arrange to have them placed in the courtroom before the court convenes on the date of the hearing. After the hearing counsel shall cause the exhibits to be removed from the courtroom unless the court otherwise directs. If exhibits are not reclaimed by counsel within a reasonable time after notice is given by the clerk, they shall be destroyed or otherwise disposed of as the clerk shall think best.

**History:** En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

**Advisory Committee's Note**

This rule is patterned after Rule 34 of the Federal Draft, but the time provisions are more liberal than those of the Federal Draft which allows 30 minutes to each side. It is intended that the time be afforded to opposing interests rather than to individual parties, as is true under the

Federal Draft. Thus, if there are multiple appellants they have together but 40 minutes, and multiple respondents have a total of 30 minutes. The 40 minutes for the appellant or applicant may be divided between the opening and closing statement, as the appellant or applicant chooses.

In other particulars this rule follows the usual practice among the federal circuits.

**Rule 30. Entry and notice of orders and judgments.**

**(a) ENTRY AND NOTICE.** The notation of a judgment or order in the docket constitutes entry thereof. Upon entry of a judgment or order, the clerk shall promptly mail to all parties a copy of the judgment or order, and notice of the date of entry thereof.

**History:** En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

**Advisory Committee's Note**

This rule is patterned after Rule 36 of the Federal Draft. The purpose is to clarify what constitutes an entry of a

judgment or order. The provision for mailing by the clerk is for the convenience of the parties but does not affect the time for taking an appeal, which is controlled by Rule 5. As to the entry of judgments, see M. R. Civ. P., Rule 58.

**Rule 31. Interest on judgments.**

If a judgment for money in a civil case is affirmed, whatever interest is allowed by law shall be payable from the date the judgment was rendered or made in the district court. If a judgment is modified or reversed with a direction that a judgment for money be entered in the district court, the mandate shall contain instructions with respect to allowance of interest.

**History:** En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

**Advisory Committee's Note**

The language of Rule 37 of the Federal Draft is modified to conform to R. C. M. 1947, section 93-8622.

**Rule 32. Damages for appeal without merit.**

If the supreme court is satisfied from the record and the presentation of the appeal, that the same was taken without substantial or reasonable grounds, but apparently for purposes of delay only, such damages may be assessed on determination thereof as under the circumstances are deemed proper.



Rule 33 (a)      RULES OF APPELLATE CIVIL PROCEDURE

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

The language of Montana Supreme Court Rule XIX is substituted for that of Rule 38 of the Federal Draft.

**Rule 33. Costs.**

(a) **COSTS ON APPEAL.** Costs on appeal will be taxed as provided by R. C. M. 1947, section 93-8606, and if not otherwise provided by the Court in its decision, will automatically be awarded to the successful party against the other party. All costs on appeal shall be claimed as provided by section 93-8621, R. C. M. 1947.

(b) **COSTS OF BRIEFS AND APPENDICES.** The cost of printing or otherwise producing briefs and appendices shall be taxable at rates not higher than specified in Rule 23(g).

(c) **OTHER COSTS TAXABLE.** Costs incurred in the preparation and transmission of the record, the cost of the reporter's transcript, if necessary for the determination of the appeal, the premiums paid for cost of supersedeas bonds or other bonds to preserve rights pending appeal, and the fee for filing notice of appeal shall be taxed in the district court as costs of the appeal in favor of the party entitled to costs under this rule.

(d) **COSTS IN ORIGINAL PROCEEDINGS.** Costs in original proceedings, including reviews other than by appeal, will be taxed as provided by R. C. M. 1947, sections 93-8602, 93-8603, 93-8604 and 93-8611, and if not otherwise provided by the court in its decision, will be awarded to the successful party against the other party; provided, however, that costs awarded to plaintiff or relator in special proceedings to review inferior court rulings, orders or judgments will ordinarily be assessed against the real party in interest, namely, the party interested in upholding the inferior court's action, rather than against the state, county, municipality, subdivision, judge or justice.

(e) **UNNECESSARY COSTS.** Whenever it appears that the successful party has caused any redundant, useless or unnecessary matter to be incorporated in the record, briefs, or appendices, whether on appeal or in a special proceeding, he shall not recover as part of his costs so much of the expense as is occasioned thereby.

(f) **NOTATION BY CLERK.** The clerk of the supreme court shall, in all cases, include in the order of judgment of affirmance, reversal or modification on appeal, or for the issuance of a peremptory writ in an original proceeding, and in the remittitur, peremptory writ or judgment, a clause awarding the costs in accordance with this rule or the special order of this Court, to be recovered after claim and ascertainment or taxation thereof in the manner prescribed by law; and the clerk shall also furnish therewith an itemized statement of such costs as have been paid by him.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-8, Sept. 10, 1968, eff. Jan. 1, 1969.

**Amendments**

The amendment of September 10, 1968, in subdivision (a), added the last sentence; in subdivision (b), deleted "in the supreme

court" after "taxable" and deleted a second sentence reading "A party who desires such costs to be taxed shall state them in a verified bill of costs which he shall file with the clerk, with proof of service, within 14 days after entry of judgment"; in subdivision (c), substituted the present caption for "costs taxable in the District Court[s]"; in subdivision (f), inserted "the" before "costs in accordance", deleted "in the supreme court" before "in accordance" and substituted "by" for "to" before "him."

#### **Advisory Committee's Note**

This rule is a combination of Rule 39

of the Federal Draft and Montana Supreme Court Rule XVIII. With some adjustment of language, subdivision (a) is taken from the Montana Rule; subdivisions (b) and (c) from the Federal Draft; and subdivisions (d), (e) and (f) from the Montana Rule.

#### **Advisory Committee's Note to September 10, 1968 Amendment**

The amendments to Rule 33(a), (b), (c) and (f) are to make it clear that all costs on appeal are claimed in the court below after remittitur and eliminate the former duplication of cost bills in both the supreme court and district court.

### **Rule 34. Petitions for rehearing.**

When, in appeals or special proceedings, it is ordered that remittitur, peremptory writ or judgment issue forthwith, no petition for rehearing will be entertained. In all other cases a petition for rehearing may be filed within 10 days after the decision of the supreme court has been rendered, unless the time is shortened or enlarged by order, and the adverse party shall have 7 days thereafter in which to serve and file his objections thereto. Extensions of time will be granted only upon showing of unusual merit, and in no event in excess of 10 days. A petition for rehearing may be presented upon the following grounds and none other: That some fact, material to the decision, or some question decisive of the case submitted by counsel, was overlooked by the court, or that the decision is in conflict with an express statute or controlling decision to which the attention of the court was not directed. Oral argument in support of the petition will not be permitted. Six copies of the petition and six copies of objections thereto, which may be in typewritten form, shall be filed with the clerk.

**History:** En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

#### **Amendments**

The amendment of September 29, 1967 substituted "fact" for "facts" following the colon; deleted a former, next to last sentence reading "No reply to a petition for rehearing will be received unless requested by the court, but a petition for rehearing will not ordinarily be granted in the absence of such a request"; and substituted "and six copies of objections \* \* \* form" for "produced in accordance with Rule 27(a)."

#### **Advisory Committee's Note**

This rule is patterned in part after Rule 40 of the Federal Draft. However, the first sentence is added from Montana Supreme Court Rule XV, as is the statement of the grounds for the petition and the procedure for serving and filing objections; also the 14 days for filing pro-

vided in the Federal Draft has been shortened to conform to state practice, and the number of copies required has been reduced from 25 to 6. The second sentence provides for filing of the petition within 10 days after "the decision of the supreme court has been rendered," rather than after "entry of judgment" as provided by the Federal Draft. The purpose is to avoid uncertainty as to when a judgment has been entered, which might exist under the language of the Federal Draft where the mandate of the supreme court is returned to the district court and there entered.

#### **Advisory Committee's Note to September 29, 1967 Amendment**

Source: None.

This amendment would dispense with requests by the court as a condition to filing replies to petitions for rehearing, and would permit petitions and objections thereto to be typewritten in the form prescribed by Rule 27(b).

Rule 35(a)      RULES OF APPELLATE CIVIL PROCEDURE

**Rule 35. Notice and copy of decision—Remittitur—Mandate from United States supreme court.**

(a) NOTICE AND COPY OF DECISION TO BE FURNISHED. Upon the decision of a cause, notice thereof, together with a copy of the court's written decision, will immediately be mailed to counsel for each party.

(b) REMITTITUR — WHEN ISSUED — WHEN COPY OF OPINION TO ACCOMPANY. Remittitur may, in cases where it is deemed proper, be ordered forthwith; otherwise the same shall be issued promptly upon expiration of time for filing petition for rehearing, or, if such petition is filed, then upon the denial thereof, unless a modification of the decision is made which permits a further petition for rehearing. A copy of the opinion must accompany the remittitur when the judgment or order of the trial court is reversed or modified and the case remanded for further proceedings other than the entry of a final judgment or order terminating the proceedings in the trial court.

(c) MANDATE FROM UNITED STATES SUPREME COURT—PROCEDURE THEREON. Upon receipt by the clerk of the supreme court of Montana of a mandate from the supreme court of the United States in any case at law or in equity theretofore taken from the supreme court of Montana to the supreme court of the United States, it shall be the duty of said clerk forthwith to issue under his hand and the seal of the supreme court of Montana a remittitur to the district court by which the judgment was rendered, commanding such court to take such action in the premises as by the mandate shall be proper, and said remittitur shall also contain therein a recital in haec verba of the said mandate, and all the costs subsequent to the appeal from said district court shall be taxed in such remittitur.

**History:** En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

**Advisory Committee's Note**

This rule incorporates Montana Supreme Court Rules XIV, XXI, and XXII. En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

**Rule 36. Voluntary dismissal.**

If the parties to an appeal or other proceeding shall sign and file with the clerk an agreement that the proceeding be dismissed, specifying the terms as to payment of costs, and shall pay whatever fees are due, the clerk shall enter the case dismissed, and shall give to each party a copy of the agreement filed; but no mandate or other process shall issue without an order of the court. An appeal may be dismissed on motion of the appellant upon such terms as to costs as may be agreed upon by the parties or fixed by the court. If an appeal has not been docketed the appeal may be dismissed by the court from which the appeal was taken upon the filing in that court of a stipulation for dismissal signed by all parties, or upon motion and notice by the appellant.

**History:** En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

**Advisory Committee's Note**

This rule is taken from Rule 42 of the Federal Draft.



**Rule 37. Substitution of parties.**

(a) **DEATH OF A PARTY.** If a party dies after a notice of appeal is filed or while a proceeding is otherwise pending in the supreme court, the personal representative of the deceased party may be substituted as a party on motion filed by the representative or by any party with the clerk of the supreme court. The motion of a party shall be served upon the representative in accordance with the provisions of Rule 20. If the deceased party has no representative, any party may suggest the death on the record and proceedings shall then be had as the supreme court may direct. If a party against whom an appeal may be taken dies after entry of a judgment or order in the district court but before a notice of appeal is filed, an appellant may proceed as if death had not occurred. After the notice of appeal is filed substitution shall be effected in the supreme court in accordance with this subdivision. If a party entitled to appeal shall die before filing a notice of appeal, the notice of appeal may be filed by his personal representative, or, if he has no personal representative, by his attorney of record within the time prescribed by these rules. After the notice of appeal is filed substitution shall be effected in the supreme court in accordance with this subdivision.

(b) **SUBSTITUTION FOR OTHER CAUSES.** If substitution of a party in the supreme court is necessary for any reason other than death, substitution shall be effected in accordance with the procedure prescribed in subdivision (a).

(c) **PUBLIC OFFICERS—DEATH OR SEPARATION FROM OFFICE.**

(1) When a public officer is a party to an appeal or other proceeding in the supreme court in his official capacity and during its pendency dies, resigns or otherwise ceases to hold office, the action does not abate and his successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(2) When a public officer is a party to an appeal or other proceeding he may be described as a party by his official title rather than by name; but the court may require his name to be added.

**History:** En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966. **Advisory Committee's Note**  
This rule is taken from Rule 43 of the Federal Draft.

**Rule 38. Cases involving constitutional questions where the state is not a party.**

It shall be the duty of counsel who challenges the constitutionality of any act of the Montana legislature in any suit or proceeding in the supreme court to which the state of Montana, or any agency thereof, or any officer or employee thereof, as such officer or employee, is not a party, upon the filing of the record to give immediate notice in writing to the court of the existence of said question, specifying the section of

**Rule 39 (a)            RULES OF APPELLATE CIVIL PROCEDURE**

the Code or the chapter of the session law to be construed. The clerk shall thereupon certify such fact to the attorney general of the state of Montana.

**History:** En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

**Advisory Committee's Note**

This rule is patterned after Rule 44 of the Federal Draft.

**Rule 39. Calendar—Withdrawal of records.**

(a) **PLACING CAUSES UPON CALENDAR.** Thirty days after the appellant's brief has been filed, the cause shall be placed on the calendar as ready for oral argument.

(b) **SETTING CAUSES FOR ARGUMENT.** As often as found convenient, causes on the calendar will be set for argument by the court in the chronological order in which they have been placed on the calendar, except such causes as are determined entitled to precedence or as otherwise ordered by the court. Oral arguments will not be heard during the months of July and August.

(c) **ADVANCEMENT OF CAUSES.** Appeals from orders dissolving, refusing to dissolve, granting or refusing to grant writs of injunction, appeals from orders dissolving or refusing to dissolve attachments, appeals from orders appointing or refusing to appoint receivers, appeals from orders or judgments holding appellant in custody, and workmen's compensation appeals, are entitled to precedence and will, upon motion of either party, be advanced on the calendar.

(d) **PERMISSION TO TAKE RECORD FROM CLERK'S OFFICE.** The records and other papers of the supreme court shall not be taken therefrom except by counsel pursuant to a written order of a justice of the court, which order shall specify the time the same may be retained out of the clerk's office; provided, that the court or a justice thereof may require the same to be returned within a shorter period upon notice. The clerk shall preserve each order and counsel's receipt until the papers therein mentioned shall be returned.

**History:** En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

**Advisory Committee's Note**

Montana Supreme Court Rules XIII and XVI have been substituted for the provisions of Rule 45 of the Federal Draft.

**Rule 40. Appeals from injunction orders.**

Upon appeal from an order dissolving or refusing an injunction, if the appellant desires to continue in force the injunction order dissolved by the district court, or to obtain such injunction order pending the appeal, he shall apply to the district court under Rule 62 of the Montana Rules of Civil Procedure. In the event the relief there requested be not granted he may file in the supreme court his sworn application, setting forth the proceedings appealed from and the relief desired, and present with it to the supreme court, a verified copy of the affidavits or evidence used on the hearing in the district court. Such application will be heard ex parte and without argument, and the court, upon such record will make such order in the premises as may be proper.

**History:** En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

**Advisory Committee's Note**

This rule incorporates the substance of Supreme Court Rule XXIII, as amended effective April 3, 1963.

**Rule 41. Statutes and rules amended.**

[This rule amended Rule 72 of the Montana Rules of Civil Procedure, and R. C. M. 1947, sections 93-5708, 93-8001, 93-8002, 93-8013 and 93-9905, subdivision 3. For text of amendments see the designated sections.]

**Rule 42. Applicability in general.**

(a) **SPECIAL STATUTORY PROCEEDINGS.** The statutory proceedings listed in Table A of the Montana Rules of Civil Procedure and any other special statutory proceedings, whether or not listed in said Table A, are excepted from these rules in so far as they are inconsistent or in conflict with the procedure and practice provided by these rules.

(b) **APPEALS TO DISTRICT COURTS.** These rules do not supersede the provisions of statutes relating to appeals to or review by the district courts, which shall govern procedure and practice relating thereto in so far as they are not inconsistent with these rules.

(c) **RULES INCORPORATED INTO STATUTES.** Where any statute heretofore or hereafter enacted, whether or not applicable to a special statutory proceeding or listed in any table appended hereto, provides that any act in a civil proceeding in a district court or in the Montana supreme court shall be done in the manner provided by law or as in a civil action or as provided by any statute superseded by these rules, such act shall be done in accordance with these rules and the procedure thereon shall conform to these rules, in so far as practicable.

**History:** En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

**Advisory Committee's Note**

This Rule is patterned after Rule 81 of the Montana Rules of Civil Procedure. It excepts inconsistent special statutory proceedings and appeals to and reviews by the district courts to the extent that

they are governed by inconsistent statutes and it is impracticable to incorporate procedures provided by these rules. But statutes such as sections 93-9302, 93-9303, 93-9718, 93-9719, and 93-9922, which contain catch-all references to the applicability of statutes which have been superseded, are brought into line with these rules in so far as practicable.

**Rule 43. Title—Effective date—Statutes superseded.**

(a) **TITLE.** These Rules shall be known as the Montana Rules of Appellate Civil Procedure and may be cited as M. R. App. Civ. P.

(b) **EFFECTIVE DATE AND APPLICATION TO PENDING PROCEEDINGS.** These rules will take effect on January 1, 1966. They govern all appeals and original proceedings brought after they take effect, and also all further proceedings in appeals and original proceedings then pending, except to the extent that in the opinion of the supreme court their application in a particular appeal or original proceeding pending when the rules take effect would not be feasible, or would



work injustice, in which event the procedure existing at the time the appeal or original proceeding was brought applies.

(c) STATUTES AND RULES SUPERSEDED. Upon the taking effect of these rules all statutes and rules, and parts thereof, in conflict herewith, and the statutes and rules listed in Tables A, B, and C, in so far as they relate to civil proceedings, are superseded in respect of practice and procedure on appeals from the district courts to the supreme court and in original proceedings brought in the supreme court.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

This rule incorporates provisions similar to those contained in Rules 85 and 86 of the Montana Rules of Civil Procedure. Subdivision (c) refers to statutes and rules only in so far as they relate to civil proceedings, to make it clear that criminal proceedings are in no way affected by these rules.

Appendix of Forms.

Form 1.

NOTICE OF APPEAL TO THE SUPREME COURT OF  
THE STATE OF MONTANA FROM A JUDGMENT  
OR ORDER OF A DISTRICT COURT  
IN THE DISTRICT COURT OF THE ..... JUDICIAL DISTRICT  
OF THE STATE OF MONTANA,  
IN AND FOR THE COUNTY OF .....

A. B. ..... Plaintiff }  
vs. ..... } Notice of Appeal  
C. D. ..... Defendant }

Notice is hereby given that C. D., defendant above-named, hereby appeals to the supreme court of the state of Montana (from the final judgment) (from the order (describing it)) entered in this action on the ..... day of ....., 19.....

(S) .....

Attorney for C. D.  
(Address) .....

Form 2.

AFFIDAVIT TO ACCOMPANY MOTION FOR LEAVE TO  
APPEAL IN FORMA PAUPERIS  
IN THE DISTRICT COURT OF THE ..... JUDICIAL DISTRICT  
OF THE STATE OF MONTANA,  
IN AND FOR THE COUNTY OF .....

A. B. ..... Plaintiff }  
vs. ..... } AFFIDAVIT IN SUPPORT OF APPLICATION  
C. D. ..... Defendant } TO PROCEED ON APPEAL WITHOUT PRE-  
PAYMENT OF COSTS

I, ....., being first duly sworn, depose and say that I am the ..... in the above-

entitled case; that in support of my application to proceed on appeal without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress; and that the issues which I desire to present on appeal are the following:

-----

-----

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

1. Are you presently employed?
  - a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.
  - b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received.
2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source?
  - a. If the answer is yes, describe each source of income, and state the amount received from each during the past twelve months.
3. Do you own any cash or checking or savings account?
  - a. If the answer is yes, state the total value of the items owned.
4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?
  - a. If the answer is yes, describe the property and state its approximate value.
5. List the persons who are dependent upon you for support and state your relationship to those persons.

I understand that a false statement or answer to any question in this affidavit will subject me to penalties for perjury.

-----

Subscribed and Sworn to before  
me this ..... day of .....,  
19 .....

-----

Notary Public

Let the applicant proceed without  
prepayment of costs.

-----

District Judge

## Table A

## RULES OF APPELLATE CIVIL PROCEDURE

Table A. List of Statutes and Rules Superseded or Amended.

Statutes Superseded (R. C. M. 1947, sections)	R.S.C.M.* Superseded, except as applicable to criminal procedure	M.R.Civ. P.** Rule Superseded
93-5501		62(a)
93-5503		62(d)
93-5504	Rule	Amended
93-5505	I	72
93-5506	II	
93-5507	III (1st par.)	
93-5508	IV	
93-5509	VI	
93-5607	VII	
93-5608	VIII	
93-5702	IX	
93-5707	X	
93-8003	XI	
93-8004	XII	
93-8005	XIII	
93-8006	XIV	
93-8011	XV	
93-8012	XVI	
93-8014	XVII	
93-8015	XVIII	
93-8016	XIX	
93-8017	XXI	
93-8018	XXII	
93-8019	XXIII	
93-8020	XXIV	
93-8021		
93-8022		
93-8023		
93-8024		
93-8025		
Amended		
93-5708		
93-8001		
93-8002		
93-8013		
93-9905(3)		

\* Rules of the Supreme Court of Montana.

\*\* Montana Rules of Civil Procedure.



Table B. List of Rules of Appellate Civil Procedure Superseding, in Whole or in Part, or Amending, Statutes and Rules.

M. R. App. Civ. P.*	Statutes and Rules**	
	Superseded or Amended (R. C. M. 1947, sections)	
Rule		
1	93-8001, 93-8002, 93-8003, 93-8017	
2	93-8022	
3	93-8019, R. S. C. M. XXIV	
4	93-8005, 93-8019	
5	93-8004	
6	93-8005, 93-8006, 93-8012, 93-8015, 93-8019	
7	93-5607, 93-8011, 93-8012, 93-8014, M. R. Civ. P. 62(a), 62(d)	
8	93-8013	
9, 10, and 25	93-5504 to 93-5509, incl., 93-5608, 93-5707, 93-8018, 93-8019, 93-8021 R. S. C. M. VII, VIII, IX, XVIII subd. 3	
11	93-8019, R. S. C. M. VI	
12	93-8020	
13	93-8016	
14	93-8023	
15	93-8024	
16	93-8025	
17	R. S. C. M. IV	
19	R. S. C. M. I	
20	R. S. C. M. III (1st par.)	
22	R. S. C. M. XI	
23	R. S. C. M. X	
26	R. S. C. M. II subd. 4, III (1st par.)	
27	R. S. C. M. II	
29	93-5702, R. S. C. M. XII	
32	R. S. C. M. XIX	
33	R. S. C. M. XVIII	
34	R. S. C. M. XV	
35	R. S. C. M. XIV, XXI, XXII	
37	R. S. C. M. XVII	
39	R. S. C. M. XIII, XVI	
40	R. S. C. M. XXIII	
41	M. R. Civ. P. 72, 93-5708, 93-9905 (3), 93-8001, 93-8002, 93-8013	

\* Montana Rules of Appellate Civil Procedure are abbreviated "M. R. App. Civ. P."

\*\* Rules of the Supreme Court of Montana are abbreviated "R. S. C. M." Montana Rules of Civil Procedure are abbreviated "M. R. Civ. P."

Table C. List of Statutes and Rules Superseded, in Whole or in Part, or Amended, by Designated Rules of Appellate Civil Procedure.

Statutes (R. C. M. 1947, sections)	M. R. App. Civ. P. Rule
93-5504 to 93-5509, incl. ....	9, 10, 25
93-5607 .....	7
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93-5702 .....	29
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93-8015 .....	6
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93-8020 .....	12
93-8021 .....	9, 10, 25
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# REVISED CODES OF MONTANA

**VOLUME 8**  
**1971 Cumulative Pocket Supplement**

*Containing*

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE  
LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF  
REPLACEMENT VOLUME 8 OF  
THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 8  
THROUGH VOLUME 478 PACIFIC REPORTER (2ND SERIES)

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VOLUME 2

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For index see pocket supplement to Replacement Volume 9

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# MONTANA REVISED CODES

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### CHAPTER 1—DEFINITIONS AND PRELIMINARY PROVISIONS

#### 94-115. (10724) Punishment of felony, when not otherwise prescribed.

##### Application

This section was not applicable to defendant sentenced for armed robbery since it merely provides penalties for crimes not otherwise provided for in statutes. *Petition of Eldiwitw*, 153 M 468, 457 P 2d 909.

Inmate's contention, on petition for writ of habeas corpus that his sentence of ten

years' imprisonment was in excess of that allowable by statute due to operation of this section, was without merit since punishment for robbery is specifically provided for by section 94-4303 and this section provides penalties only for crimes not otherwise provided for in statutes. *Petition of O'Rourke*, 154 M 265, 461 P 2d 1.

### CHAPTER 6—ASSAULTS

#### 94-601. (10976) Assault in the first degree defined—penalty.

##### Criminal Intent

Dismissal of first-degree assault charge was properly refused where there was evi-

dence to support finding of jury that defendant had necessary intent. *State v. Bentley*, — M —, 472 P 2d 864.

### CHAPTER 7—BIGAMY AND INCEST

#### 94-702. (11026) Exceptions.

##### Voidness of Former Marriage

Although bigamous marriage may be void from beginning for civil purposes, it nevertheless renders subsequent marriage bigamous under section 94-701 for criminal

purposes, unless defendant can show that previous bigamous marriage was pronounced void, annulled or dissolved by competent court as provided under this section. *Crosby v. Ellsworth*, 431 F 2d 35.

### CHAPTER 9—BURGLARY AND HOUSEBREAKING—POSSESSION OF BURGLARIOUS INSTRUMENTS AND DEADLY WEAPONS

#### 94-901. (11346) Burglary defined.

##### Possession of Stolen Property

Trial court's instruction to jury which stated that failure of defendant to explain his possession of stolen property pointed to his guilt did not amount to forbidden comment on defendant's failure to testify

since such explanation could have been given by defendant, by having another person testify, or by introducing real evidence. *State v. Branch*, — M —, 465 P 2d 821.



**94-909. (11354) Carrying deadly weapon with intent to assault, etc.****Sufficiency of Evidence**

Even though victim testified he did not know defendant had pistol, fact that witnesses shouted "he has a gun" and that defendant sought protective cover pro-

vided sufficient evidence for trial court to refuse to dismiss charge of violation of this section. *State v. Bentley*, — M —, 472 P 2d 864.

**CHAPTER 14—ELECTION FRAUDS AND OFFENSES—CORRUPT PRACTICES ACT****Section**

94-1436. Record of statements—copies.

**94-1436. (10782) Record of statements—copies.** All statements shall be preserved by the officer with whom they are filed during the term of office to which they relate, and shall be public records subject to public inspection, and it shall be the duty of the officers having custody of the same to give certified copies thereof in like manner as of other public records.

**History:** En. Sec. 17, Init. Act, Nov. 1912; re-en. Sec. 10782, R. C. M. 1921; amd. Sec. 1, Ch. 41, L. 1943; amd. Sec. 1, Ch. 251, L. 1971.

**Amendments**

The 1971 amendment substituted "by the officer with whom they are filed during the term of office" for "for six months after the election."

**CHAPTER 18—FALSE PERSONATION AND CHEATS****94-1805. (11410) Obtaining money, etc. by false pretenses.****Fraudulent Checks**

Fact that defendant charged under this section might instead have been charged under section 94-2702, a misdemeanor section, did not prevent his conviction under

this section; a person may be guilty of violating more than one section by the same act. *State v. Evans*, 153 M 303, 456 P 2d 842.

**CHAPTER 20—FORGERY AND COUNTERFEITING****94-2014. Production of false identification documents.****Cross-References**

Immunity of public entities for inaccurate identification cards, sec. 31-172.

**CHAPTER 25—HOMICIDE****94-2510. (10962) Proof of corpus delicti.****Jury Instructions**

In conviction of first degree murder, trial court did not err in refusing defendant's proposed instructions which in-

corporated language of this section where proof of corpus delicti beyond reasonable doubt was included in another instruction. *State v. Quigg*, — M —, 467 P 2d 692.

**94-2513. (10965) Justifiable homicide by other persons.****Self-Defense**

Instruction on justifiable homicide and self-defense was not required where evidence showed that wife shot husband five

times in alleged attempt to take weapon from him to prevent damage to property. *State v. Eisenman*, — M —, 472 P 2d 857.

CHAPTER 27—LARCENY AND FALSIFICATION OF  
PUBLIC RECORDS AND JURY LISTS**94-2702. (11369) Uttering fraudulent checks or drafts—evidence.****Felony Charge**

Fact that defendant might have been charged under this section did not prevent his conviction under section 94-1805, a

felony section; a person may be guilty of violating more than one section by the same act. *State v. Evans*, 153 M 303, 456 P 2d 842.

**94-2704.1. Possession of stolen livestock as evidence of larceny.****Jury Instructions**

Jury instruction in grand larceny case which quoted this section was proper under circumstances. *State v. Perkins*, 153 M 361, 457 P 2d 465.

Trial court did not commit reversible error in giving jury instruction taken verbatim from this section, since, even though state has burden of proof in criminal cases under section 94-7203, the burden of evidence may shift to defendant. *State v. Gloyne*, — M —, 476 P 2d 511.

**94-2721. (11388) Receiver of stolen property.****Constitutionality**

This section was not unconstitutional in delegating to prosecuting attorney discretion to charge persons with either misdemeanor or felony, since this section

provides that person must be charged with felony and it is then within sound discretion of court, after conviction, to determine punishment. *Petition of Gibson*, 153 M 454, 457 P 2d 767.

## CHAPTER 31—MACHINE GUN ACT

**94-3108. (11317.8) Registration of machine guns, etc.****Cross-References**

Functions of secretary of state trans-

ferred to department of law enforcement and public safety, sec. 82A-1203(3).

## CHAPTER 33—MALICIOUS MISCHIEF GENERALLY

**Section**

- 94-3335. Legislative intent to prevent littering.
- 94-3336. Littering public or private properties unlawful—exceptions.
- 94-3337. Litter defined.
- 94-3338. Public or private property defined.
- 94-3339. Penalties.
- 94-3340. Prima facie violation by operators of conveyances.
- 94-3341. Who authorized to enforce act.
- 94-3342. Public authorities to maintain receptacles in public places.
- 94-3343. Short title.
- 94-3344. Notices of act and penalties posted on highways.

**94-3335. Legislative intent to prevent littering.** It is the intention of the legislature by this act to provide for uniform prohibition throughout the state of any and all littering on public and private property, and to curb thereby the desecration of the beauty of the state and harm to health, welfare and safety of its citizens caused by individuals who litter.

**History:** En. Sec. 1, Ch. 323, L. 1971.

**Title of Act**

An act to define, control and prohibit

the littering of public and private property, providing a penalty therefor, and repealing sections 32-1629, 32-1629.1, 32-1630 and 32-1631, R. C. M. 1947.

**94-3336. Littering public or private properties unlawful—exceptions.** It is unlawful for any person or persons to dump, deposit, throw or leave,

or to cause or permit dumping, depositing, placing, throwing, or leaving of litter on any public or private property in this state, or any waters in this state, unless:

- (1) Such property is designated by the state or by any of its agencies or political subdivisions for the disposal of such material, and such person is authorized by the proper public authority to use such property;
- (2) Into a litter receptacle or container installed on such property;
- (3) He is the owner or tenant in lawful possession of such property, or has first obtained consent of the owner or tenant in lawful possession, or unless the act is done under the personal direction of said tenant or owner.

**History:** En. Sec. 2, Ch. 323, L. 1971.

**94-3337. Litter defined.** The term "litter" as used herein shall mean all rubbish, waste material, refuse, garbage, trash, debris or other foreign substances of every kind and description, including abandoned motor vehicles.

**History:** En. Sec. 3, Ch. 323, L. 1971.

**94-3338. Public or private property defined.** The phrase "public or private property" as used herein shall include, but not be limited to, the right of way of any road or highway; any body of water or water-course or the shores or beaches thereof; any park, playground, building, refuge or conservation or recreation area, and any residential or farm properties or timberlands.

**History:** En. Sec. 4, Ch. 323, L. 1971.

**94-3339. Penalties.** Any person violating the provisions of section 2 [94-3336] of this act is guilty of a misdemeanor, subject to a minimum fine of ten dollars (\$10) or imprisonment, or both, as in the case of misdemeanors, and, in lieu thereof, in the sound discretion of any court in which conviction is obtained, may be directed by the judge to pick up and remove from any public street or highway or public and private right of way, or public beach or public park, or, with prior permission of the legal owner or tenant in lawful possession of such property, any private property upon which it has been established by competent evidence that he has deposited litter, any and all litter deposited thereon by anyone prior to the date of execution of sentence.

**History:** En. Sec. 5, Ch. 323, L. 1971.

**94-3340. Prima facie violation by operators of conveyances.** Whenever litter is thrown, deposited, dropped or dumped from any motor vehicle, boat, airplane or other conveyance in violation of section 2 [94-3336] hereof, the operator of said conveyance shall be deemed prima facie to have violated this act.

**History:** En. Sec. 6, Ch. 323, L. 1971.

**94-3341. Who authorized to enforce act.** All law enforcement agencies, officers and officials of this state or any political subdivision thereof,



or any enforcement agency, officer or any official of any commission of this state or any political subdivision thereof, are hereby authorized, empowered and directed to enforce compliance with this act.

History: En. Sec. 7, Ch. 323, L. 1971.

#### **94-3342. Public authorities to maintain receptacles in public places.**

All public authorities having supervision of properties of this state are authorized, empowered and instructed to establish and maintain receptacles for the deposit of litter at appropriate locations where such property is frequented by the public, and to post signs directing persons to otherwise publicize the availability of litter receptacles and requirements of this act.

History: En. Sec. 8, Ch. 323, L. 1971.

**94-3343. Short title.** This act shall be known as the litter control law.

History: En. Sec. 9, Ch. 323, L. 1971.

**94-3344. Notices of act and penalties posted on highways.** It is the duty of the state highway commission to post notices of this act, and the penalties provided for, on the state and interstate highways at locations to be designated by the state highway commission.

History: En. Sec. 11, Ch. 323, L. 1971. other persons or circumstances is unaffected."

#### **Separability Clause**

Section 10 of Ch. 323, Laws 1971 read "If any provision of this act, or its application to any person or circumstances is held invalid, the remainder of the act, or the application of the provision to

#### **Repealing Clause**

Section 12 of Ch. 323, Laws 1971 read "Sections 32-1629, 32-1629.1, 32-1630 and 32-1631, R. C. M. 1947, are hereby repealed."

### **CHAPTER 35—MISCELLANEOUS OFFENSES**

#### **Section**

- 94-3527.** Carrying certain concealed weapons forbidden—punishment—who excepted from act.
- 94-3552.1.** Use of junked motor vehicles in streams unlawful.
- 94-3552.2.** Penalty for use of junked motor vehicles in streams.
- 94-35-106.** Intoxicating liquors—penalty for giving or selling to any person under the age of nineteen years.
- 94-35-106.2.** Possession of beer or liquor by minor—misdemeanor.
- 94-35-249.** Vending or coin-operated machines—operation with counterfeit slugs, etc., forbidden.
- 94-35-269.** Hunting in careless or reckless manner—failure to assist person injured or wounded—misdemeanor.

#### **94-3504. (11211) Altering brands.**

##### **Unauthorized Brand**

An unauthorized brand or mark does not have to touch, alter or deface a former brand on an animal to be in violation of this section. State v. Johnson, — M —, 472 P 2d 287.

**94-3527. (11304) Carrying certain concealed weapons forbidden—punishment—who excepted from act.** The preceding sections shall not apply to:

1. to 15. \* \* \* [Same as parent volume.]

16. United States immigration and naturalization service officer;

17. National park service rangers.

**History:** En. Sec. 3, Ch. 74, L. 1919; **Amendments** re-en. Sec. 11304, R. C. M. 1921; amd. Sec. 1, Ch. 63, L. 1969; amd. Sec. 1, Ch. 54, L. 1971. The 1971 amendment added item 17, relating to national park service rangers.

**94-3552.1. Use of junked motor vehicles in streams unlawful.** It is unlawful to place junked motor vehicles, or the body portion of junked motor vehicles, between high-water channel banks of any stream or to reinforce banks of a stream.

**History:** En. Sec. 1, Ch. 319, L. 1971.

motor vehicles for flood control of a stream or for reinforcement of the banks of a stream.

**Title of Act**

An act making it unlawful to use junked

**94-3552.2. Penalty for use of junked motor vehicles in streams.** Any person who violates the provisions of this act is guilty of a misdemeanor and upon conviction shall be fined not to exceed two hundred and fifty dollars (\$250), imprisoned in the county jail for any term not to exceed thirty (30) days, or both.

**History:** En. Sec. 2, Ch. 319, L. 1971.

**94-35-106. Intoxicating liquors—penalty for giving or selling to any person under the age of nineteen years.** Any person who shall sell, give away or dispose of intoxicating liquor to any persons under the age of nineteen (19) years, shall for the first offense be subject to punishment not exceeding five hundred dollars (\$500) fine or by imprisonment not to exceed six (6) months in the county jail, or both such fine and imprisonment, and upon conviction for the second and subsequent offenses he shall be subject to punishment by fine of not less than five hundred dollars (\$500) nor more than two thousand dollars (\$2,000) or by imprisonment in the state penitentiary for not less than one (1) year nor more than five (5) years, or by both such fine and imprisonment. Nothing herein contained shall prevent the furnishing of intoxicating liquor to a person under nineteen (19) years of age upon any physician's prescription where authorized by the laws of this state or the United States, nor the furnishing of wine for sacramental purposes.

**History:** En. Sec. 1, Ch. 143, L. 1949; amd. Sec. 22, Ch. 240, L. 1971.

**Amendments**

The 1971 amendment reduced the specified age from 21 to 19 years in two instances; and made minor changes in style.

**94-35-106.2. Possession of beer or liquor by minor—misdemeanor.** Any person who shall not have reached the age of nineteen (19) years and who shall have in his or her possession beer or liquor, shall be guilty of a misdemeanor.

**History:** En. Sec. 1, Ch. 125, L. 1957; amd. Sec. 23, Ch. 240, L. 1971.

**Amendments**

The 1971 amendment reduced the specified age from 21 to 19 years.

**94-35-138. (11039.1) Repealed.**

**Repeal** Section 94-35-138 (Sec. 1, Ch. 49, L. 1927), relating to minors frequenting pub-

lic dance halls, was repealed by Sec. 1, Ch. 114, Laws 1971.

**94-35-249. Vending or coin-operated machines—operation with counterfeit slugs, etc., forbidden.** Any person who, by means of any token, slug, false or counterfeited coin, or by any other means, method, trick or device whatsoever not lawfully authorized by the owner, lessee, or licensee of any lawful vending machine, coin-box telephone or other receptacle designed to receive or be operated by lawful coin of the United States of America in furtherance of or connection with the sale, use or enjoyment of property or service, knowingly shall operate or cause to be operated, or shall attempt to operate or attempt to cause to be operated, any lawful vending machine, coin-box telephone or other receptacle designed to receive or be operated by lawful coin of the United States of America, or whoever shall take, obtain, accept or receive, from or by means of any such machine, coin-box telephone or other receptacle, any article of value of service or the use or enjoyment of any telephone, telegraph or other facility or service, without depositing in, delivering to and payment into such machine, coin-box telephone or receptacle the amount of lawful coin of the United States of America required therefor by the owner, lessee or licensee of such machine, coin-box telephone or other receptacle, and any person who possesses, with the intent to commit larceny, a key or device specifically designed to open or break any parking meter, coin telephone, or other vending machines dispensing goods or services, shall be fined not more than two hundred dollars (\$200.00), or imprisoned not more than sixty (60) days, or both.

**History:** En. Sec. 1, Ch. 83, L. 1945; amd. Sec. 1, Ch. 172, L. 1971.

**Amendments**

The 1971 amendment inserted "and any person who possesses, with the intent to

commit larceny, a key or device specifically designed to open or break any parking meter, coin telephone, or other vending machines dispensing goods or services" near the end of the section.

**94-35-269. Hunting in careless or reckless manner—failure to assist person injured or wounded—misdemeanor.** (1) Any person who, in the act of pursuing, taking or killing wildlife, shall act in a careless or reckless manner, or with wanton disregard of human life or property, or who knowingly fails to give all reasonable assistance to any person whom he has injured or wounded, shall, upon conviction thereof, be deemed guilty of a misdemeanor, and upon conviction thereof, be punished as provided by law.

(2) Any such person convicted of injuring, wounding, or killing any person shall lose all hunting privileges and licenses for a period of twenty (20) years unless assistance is rendered to the injured or wounded person and the incident duly reported. Such person shall be responsible for and bear all costs and expenses incurred by the state or any county in the rescue or removal of a wounded or dead person whom he injured or killed, as provided in subsection (1) above.



**History:** En. Sec. 1, Ch. 189, L. 1955; amd. Sec. 1, Ch. 346, L. 1971.

**Amendments**

The 1971 amendment designated the

former language as subsection (1); substituted "wildlife" for "game animals or game birds" near the beginning of subsection (1); and added subsection (2).

CHAPTER 40—POOL HALLS—BILLIARD HALLS—BOWLING ALLEYS—PROHIBITIONS GOVERNING

**94-4001. (11188) Conducting certain pool games a misdemeanor.** Any owner, proprietor, manager, or employee who permits, or any person who carries on, or conducts, or causes to be conducted or runs, as principal, agent, or employee, any game of pea pool, pay pool, Kelly pool, or any other game of chance, science, or skill, played upon any pooltable or upon any billiard-table, for money, checks, credits, or any representative of value, shall be deemed to be guilty of a misdemeanor and punished as provided in this act.

**Compiler's Notes**

This section is reprinted herein to cor-

rect a typographical error in the parent volume.

CHAPTER 41—RAPE AND OTHER SEXUAL CRIMES

**94-4101. (11000) Rape defined.**

**Jury Instructions**

Instruction in rape case based upon language of sections 94-4104, 95-2202 and 95-2206, was proper and was not open to attack on grounds that such instruction incorrectly stated law. *State v. Metcalf*, 153 M 369, 457 P 2d 453.

**Physical Resistance**

Physical resistance by prosecutrix was not necessary element of rape where evidence supported conviction under subsec. (4) of this section, which simply requires that there be threats of immediate and great bodily harm, accompanied by apparent power of execution. *State v. Metcalf*, 153 M 369, 457 P 2d 453.

**Statutory Rape**

Prima facie case of statutory rape was established by testimony of rape victim on cross- and redirect examination that defendant had committed an act of sexual intercourse with her. *State v. Anderson*, — M —, 476 P 2d 780.

**Sufficiency of Evidence**

Evidence that included victim's testimony corroborated by medical evidence was sufficient to support jury conviction of statutory rape. *State v. Anderson*, — M —, 476 P 2d 780.

**94-4103. (11002) Penetration sufficient.**

**Jury Instructions**

Adding of sentence, "Proof of emission is not necessary," to this section and using

such language as part of charge to jury in rape case did not constitute error. *State v. Bouldin*, 153 M 276, 456 P 2d 830.

**94-4106. (11005) Lewd and lascivious acts upon children.**

**Constitutionality**

Sentence imposed under this section was not subject to attack on ground that it represented cruel and unusual punishment, and contention that this section is vague and without standards was without merit. *State v. Jensen*, 153 M 489, 458 P 2d 782.

**Admission of Testimony**

Where defendant was charged with violation of this section, it was not error for trial court to admit testimony of other women concerning similar improper acts committed by defendant since such testimony showed continuous pattern of behavior on part of defendant. *State v. Jensen*, 153 M 233, 455 P 2d 631.

## CHAPTER 43—ROBBERY

**94-4303. (10975) Punishment of robbery.****Maximum Punishment**

Since there is no maximum penalty stated in this section it is presumed that person may be incarcerated for lifetime on conviction of robbery. *Petition of Eldiwitw*, 153 M 468, 457 P 2d 909.

Sentence of ten years' imprisonment for robbery was not in excess of that allow-

able by statute due to operation of section 94-115 since punishment for conviction of robbery is specifically provided for by this section, and section 94-115 only provides penalties for crimes not otherwise provided for in statutes. *Petition of O'Rourke*, 154 M 265, 461 P 2d 1.

CHAPTER 47—PUNISHMENTS—ATTEMPTS AND OTHER  
GENERAL PROVISIONS**94-4713. (11593) Second offense, how punished, etc.****Harmless Admission**

Where defendant admitted during trial that he had been previously convicted of felony, sentence of five years indicated that testimony of prior conviction did not enhance punishment since under this section he would have received minimum sentence of ten years. *Petition of Gallagher*, 153 M 440, 456 P 2d 306.

**Void Conviction**

Where defendant was denied due process during arraignment for prior conviction, trial court improperly sentenced defendant pursuant to this section since prior felony conviction was null and void. *Lewis v. State*, 153 M 460, 457 P 2d 765.

CHAPTER 55—REMOVAL OF OFFICERS OTHERWISE  
THAN BY IMPEACHMENT**94-5516. (11702) Removal of public officers by summary proceedings.****Intent**

Willfulness must be alleged and proved to remove an officer summarily pursuant to this section. *State ex rel. Arnot v.*

*District Court of First Judicial District In and For County of Lewis and Clark*, — M —, 472 P 2d 302.

## CHAPTER 68—PLEAS

**94-6808.3. When prosecution barred by former prosecution.****Information**

Information that did not particularize the charge against defendant was not fatally defective, since under this section

prosecution for same transaction that resulted in earlier conviction is expressly barred. *State v. Dunn*, — M —, 472 P 2d 288.

## CHAPTER 72—THE TRIAL

**94-7203. (11971) Defendant presumed innocent—reasonable doubt.****Burden of Proof**

Jury instruction taken verbatim from section 94-2704.1 that stated that possession of recently stolen livestock is prima facie evidence of guilt of larceny did not constitute reversible error, since, even though state has burden of proof in criminal cases, the burden of evidence may shift to defendant. *State v. Gloyne*, — M —, 476 P 2d 511.

**Circumstantial Evidence**

Conviction of defendant on charge of burglary in first degree on only circumstantial evidence consisting of ten rolls of half-dollars, three of which had been identified by store owner in front of witness, fact that defendant's father-in-law two weeks after burglary had deposited these rolls of half-dollars in bank after receiving them from defendant in payment of debt, and testimony by one witness that she had seen defendant in

store two days before burglary, did not violate this section on grounds that evidence was insufficient to warrant conviction; burden of proof never shifts, but burden of evidence may shift frequently, and where all evidence is circumstantial, test is whether facts and circumstances

are of such quality and quantity to legally justify jury in determining guilt beyond reasonable doubt; fact alone that evidence is circumstantial is not sufficient grounds to justify reversal. *State v. Proctor*, 153 M 90, 454 P 2d 616.

#### 94-7220. (11988) Conviction on testimony of accomplice.

##### Sufficiency of Corroborative Evidence

Testimony of accomplice to burglary was sufficiently corroborated by evidence that defendant owned car involved in burglary, had attended same party with other principals in burglary, was with other principals

in grocery earlier on day of burglary, and admitted being in house where stolen property was discovered and knew it was there. *State v. Dess*, 154 M 231, 462 P 2d 186.

### CHAPTER 79—UNIFORM ACT FOR OUT-OF-STATE PAROLEE SUPERVISION

#### 94-7901. Governor may make interstate compact for control of crime, etc.

NOTE.—Uniform State Law. The following states have enacted the Uniform Act of Out of State Parolee Supervision: Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Idaho, Kansas, Kentucky, Louisiana, Maine, Maryland, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah,

Vermont, Virginia, Washington, and Wisconsin.

##### Constitutionality

Requirement that parolee sign waiver of extradition before release to another state was not unconstitutional, and parolee could be detained for parole violation by unauthorized departure from the host state. In *Re Petition of Schwartz*, 154 M 505, 463 P 2d 316.

### CHAPTER 88—WHO MAY BE WITNESSES IN CRIMINAL ACTIONS

#### 94-8803. (12177) When the defendant is not a competent witness, etc.

##### Jury Instruction

Instruction to jury which stated that failure of defendant to explain his possession of stolen property pointed to his guilt did not amount to forbidden comment on defendant's failure to testify since such explanation could have been given by defendant, by having another person testify, or by introducing real evidence. *State v. Branch*, — M —, 465 P 2d 821.

##### Privilege Against Self-Incrimination

Conviction of petty larceny was reversed and new trial granted where prose-

cutor in final argument to jury made comment to jury which could only be construed as reflecting prejudicially on defendant's failure to take stand and testify. *State v. Hart*, 154 M 310, 462 P 2d 885.

Prosecutor's statement to jury on voir dire that rape case has only two witnesses, the people involved, and that jury must weigh their respective testimony if defendant chooses to testify, did not prejudice defendant's case by compelling him to testify contrary to his rights under this section. *State v. Anderson*, — M —, 476 P 2d 780.

### CHAPTER 98—PROBATION, PAROLE AND CLEMENCY

#### 94-9822. Board of pardons—organization.

##### Cross-References

Board continued in department of administration, sec. 82A-804.

Terms of office of board members after reorganization, sec. 82A-112(2)(b).



**94-9825. Director and employees—salaries to be paid monthly, etc.****Cross-References**

Director's position renamed, sec. 82A-804(4).

**94-9831. Arrest—subsequent disposition.****Parole Violation**

This section does not require parolee to be taken before court for complete hearing on parole violation but provides only

for persons on probation or on suspended sentence. Petition of Spurlock, 153 M 475, 458 P 2d 80.

**94-9835. Persons may be heard—counsel.****Appointment of Counsel Not Required**

There is no constitutional right to counsel at parole revocation hearing, but rather a statutory right under this section, which by no means requires board to provide counsel for parolee. Petition of High Pine, 153 M 464, 457 P 2d 912.

**Right to Counsel and Hearing**

Parolee not released on prison furlough as provided under section 95-2217 was not entitled as of right to counsel and hearing before district court regarding parole violation, since neither is required under this section. Petition of Osier, — M —, 477 P 2d 344.

**94-9838. Return of parole violator.****Appointment of Counsel Not Required**

Under this section, parole violator is required to be brought before board for hearing, but court hearing is not required; parole violator does not have constitutional right but has statutory right to an attorney at parole revocation hearing, and board is not required to furnish parolee an attorney during such hearing. Petition of Wing, 154 M 501, 464 P 2d 302.

**Promptness of Hearing**

Where five-month delay by parole board was seemingly caused by parolee being in hospital, requirement under this section that hearing be "prompt" was not violated. Petition of Spurlock, 153 M 475, 458 P 2d 80.

## CHAPTER 801—FINES AND FORFEITURES—DISPOSAL OF

**94-801-2. Traffic fines collected from juvenile offenders—disposition.****Compiler's Notes**

Section 75-5304, referred to twice in this section, was repealed by Sec. 12, Ch. 214,

Laws of 1969. For present law, see section 75-7903.



## TITLE 95—MONTANA CODE OF CRIMINAL PROCEDURE

### Chapter

6. Arrest, 95-618.

17. Pretrial motions, 95-1703.

### CHAPTER 2—DEFINITIONS

#### 95-210. Peace officer.

##### Cross-References

Certain employees of state highway commission as peace officers, secs. 32-1632 to 32-1641.

Members of Montana university system security department as peace officers, sec. 75-8513.

### CHAPTER 6—ARREST

#### Section

95-618. Roadblocks.

#### 95-608. Arrest by a peace officer.

##### Probable Cause

Probable cause existed for arrest on dangerous drug charges of three persons who were present and lived in house where drugs were found; but probable cause did not exist concerning fourth party who

was present on premises but did not live there, notwithstanding later finding of drugs on such party, since mere presence in place was insufficient to justify arrest. State ex rel. Glantz v. District Court, 154 M 132, 461 P 2d 193.

#### 95-618. Roadblocks. (a) \* \* \* [Same as parent volume.]

(b) Authority to Establish Roadblocks. The duly elected or appointed law-enforcement officers of this state, and their deputies, are hereby authorized to establish, in their respective jurisdictions, or in other jurisdictions within the state, temporary roadblocks on the highways of this state for the purpose of identifying drivers, checking for driver's licenses, and apprehending persons wanted for violation of the laws of this state, or of any other state, or of the United States, who are using the highways of this state.

(c) to (e) \* \* \* [Same as parent volume.]

**History:** En. 95-618 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 18, L. 1971.

##### Amendments

The 1971 amendment inserted "checking for driver's licenses" in subsection (b).

### CHAPTER 7—SEARCH AND SEIZURE

#### 95-701. Searches and seizures—when authorized.

##### Consent

Where defendant in first-degree murder prosecution had taken sheriff to his house and turned over alleged murder weapon to sheriff, such action did not constitute an illegal search and seizure since defendant voluntarily consented to turning over

rifle. State v. Williams, 153 M 262, 455 P 2d 634.

Where appellant, convicted on charge of robbery, had been given three Miranda warnings during course of investigation, evidence obtained from appellant's apartment after he gave consent to police to



go there was not the product of an unlawful search and seizure and therefore its admission was not error, notwithstanding

that no warrant was issued for such search. *State v. Braden*, 154 M 90, 460 P 2d 85.

## 95-704. Grounds for search warrant.

### General Warrant

Search warrants which incorporated phrase "any .22 caliber pistol" and "any other property or evidence they might discover that may connect to the demise" of deceased was not a "general warrant," and therefore was not constitutionally invalid. *State v. Quigg*, — M —, 467 P 2d 692.

### "Probable Cause"

There was not probable cause for issuance of search warrant for burglar tools and illegal drugs based on judge's personal knowledge of the accused's reputation and witnesses' observations of a pillow and tools in his car from which accused drew gun. *State v. Bentley*, — M —, 477 P 2d 345.

## 95-717. When search and seizure not illegal.

### Disclaimer

Evidence discovered during search of house occupied by defendant's mother was properly admitted on charge of burglary since defendant disclaimed any in-

terest in property recovered from search and had no possessory interest in his mother's home. *State v. Dess*, 154 M 231, 462 P 2d 186.

## CHAPTER 10—RIGHT TO COUNSEL

### 95-1001. Right to counsel.

#### Attorney's Lien

Court could not summarily impose a lien on defendant's estate in favor of county for services of counsel appointed when

it was thought defendant might be indigent. *Petition of Hunsinger*, 153 M 445, 456 P 2d 304.

### 95-1002. Waiver of counsel.

#### Waiver of Right to Counsel

Even though appellant was not eighteen years old, but rather seventeen years and eight months old, this section did not apply where defendant had been convicted of robbery, had I.Q. of 122, had

been in trouble with law before, had spent time in state correctional school, had been given three Miranda warnings and had waived his right to counsel. *State v. Braden*, 154 M 90, 460 P 2d 85.

## CHAPTER 11—BAIL

### 95-1109. Bail after conviction.

#### Abuse of Discretion

Where complete presentence investigation was conducted, trial court did not abuse its discretion by refusing admission

to bail pending appeal after defendant was convicted of second-degree murder and sentenced to fifty years in state prison. *State v. Kotarski*, 154 M 309, 462 P 2d 873.

## CHAPTER 12—PRELIMINARY EXAMINATION

### 95-1202. Proceedings at the preliminary examination.

#### Option To Use Information

Order by justice of peace setting a time and place for preliminary hearing does not prevent prosecution from pro-

ceeding instead by information filed under section 95-1301. *State v. Dunn*, — M —, 472 P 2d 288.

**Right to Preliminary Hearing**

Where supporting affidavit filed under section 95-1301(a) established probable cause to the satisfaction of the district judge, defendant had no right to a pre-

liminary hearing to conduct a "fishing expedition" for pretrial discovery of prosecution's evidence. *State v. Dunn*, — M —, 472 P 2d 288.

## CHAPTER 13—LEAVE TO FILE INFORMATION AND TIME FOR FILING INFORMATION

**95-1301. Leave to file information.****Bypassing Preliminary Hearing**

Where preliminary hearing was ordered for defendant after an initial appearance before justice of the peace, prosecutor was not precluded thereby from subsequently filing for leave to file an information under this section. *State v. Dunn*, — M —, 472 P 2d 288.

**Granting Leave**

Where relators were arrested and charged with possession of dangerous drugs, district court did not err in granting leave to file informations against such persons, pursuant to this section, since probable cause existed for arrest of these persons without warrant. *State ex rel. Glantz v. District Court*, 154 M 132, 461 P 2d 193.

**Sufficiency of Facts in Information**

Where evidence in supporting affidavit

established probable cause to satisfaction of district judge, defendant had no right to preliminary hearing to enable him to discover information and knowledge of state's witnesses. *State v. Dunn*, — M —, 472 P 2d 288.

**Supporting Affidavit**

There is no requirement under subsection (a) that a supporting affidavit of a witness having direct knowledge of facts sufficient to establish probable cause be filed with the application to file an information. *State v. Dunn*, — M —, 472 P 2d 288.

Absence of supporting affidavit for leave to file information contrary to this section was not fatal error, since it is a procedural matter and does not affect substantial rights of the defendant. *State v. Logan*, — M —, 473 P 2d 833.

## CHAPTER 15—CHARGING AN OFFENSE

**95-1503. Form of charge.****Sufficiency of Charge—Unlawful Sale of Drug**

Information charging defendant with violation of section 54-132 for sale of dangerous drugs was sufficient even though

failing to conform with specific requirements of this section, since defendant was apprised of the charges against him. *State v. Dunn*, — M —, 472 P 2d 288.

**95-1506. Prior conviction.****Notice**

Where state, pursuant to this section, gave proper notice to defendant of its intention to seek increased punishment if defendant was convicted on charge of

rape, on basis of defendant's prior conviction of felony, there was no error since jury was not in possession of such information. *State v. Metcalf*, 153 M 369, 457 P 2d 453.

## CHAPTER 16—ARRAIGNMENT OF DEFENDANT

**95-1608. Irregularity of arraignment.****Failure to File Affidavit**

Failure of county attorney to support request for direct information with accompanying affidavit contrary to section 95-

1301 was a procedural matter that did not affect substantial rights of the defendant. *State v. Logan*, — M —, 473 P 2d 833.

## CHAPTER 17—PRETRIAL MOTIONS

Section 95-1703. Dismissal on motion of court or application of attorney prosecuting.

**95-1702. Defenses and objections which must be raised before trial.****Waiver**

Failure to object in trial court that application for permission to file an information was not accompanied by supporting affidavit contrary to section 95-1301 waived the objection. *State v. Logan*, — M —, 473 P 2d 833.

**95-1703. Dismissal on motion of court or application of attorney prosecuting.** (1) The court may, either on its own motion or upon the application of the attorney prosecuting, and in furtherance of justice, order an action, complaint, information, or indictment to be dismissed. The reasons of the dismissal must be set forth in an order entered upon the minutes.

(2) The court, unless good cause to the contrary is shown, must order the prosecution to be dismissed in the following case:

If a defendant, after entry of plea upon a complaint, information, or indictment charging a misdemeanor, whose trial has not been postponed upon his application, is not brought to trial within six months.

(3) An order for the dismissal of an action, as provided in this chapter, is a bar to any other prosecution for the same offense if it is a misdemeanor, but it is not a bar if the offense is a felony.

**History** En. 95-1703 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 173, L. 1971.

**Amendments**

The 1971 amendment designated the former provisions as subsection (1) and added subsections (2) and (3).

## CHAPTER 18—PRODUCTION AND SUPPRESSION OF EVIDENCE

**95-1802. Depositions.****Admissibility in Evidence**

In rape case, testimony of witness given at preliminary hearing in defendant's presence, where witness had been cross-examined by defendant's counsel, and where testimony had been recorded and transcribed by court reporter, was expressly admissible in evidence under this section where proper foundation had been laid first by showing that witness could not be located for trial. *State v. Bouldin*, 153 M 276, 456 P 2d 830.

**Unwillingness of Witness**

Affidavit showing that witness had not answered defendant's mailed request to contact attorney to arrange for interview did not sufficiently establish witness's unwillingness to provide information so as to require a court-ordered deposition. *State v. Dunn*, — M —, 472 P 2d 288.

**95-1803. Discovery, inspection, and notice.****Constitutionality**

While this section may be unconstitutionally applied, it is constitutional on its face and not repugnant to 4th, 5th, 6th, and 14th Amendments of constitution of United States. *State ex rel. Sikora v. District Court*, 154 M 241, 462 P 2d 897.

**Defenses of Insanity and Self-Defense**

This section, as it relates to defenses of insanity and self-defense, is to be interpreted as directory only. *State ex rel. Sikora v. District Court*, 154 M 241, 462 P 2d 897.



**Failure To File Notice of Defense**

Trial judge might allow psychiatric proof even though motion was untimely but, where defendant's counsel did not comply with court order to submit all motions of defense at time of pleading to information or during six-month delay in

going to trial, trial court properly denied defendant's notice of intention to rely on mental disease or defect under subsection (d) of this section as not being timely filed. *State v. Bentley*, — M —, 472 P 2d 864.

**95-1804. Motion to produce confession or admission.****List of Witnesses**

In the absence of surprise, testimony concerning defendant's oral admission of guilt was properly admitted even though

state had not supplied the names of witnesses to the admission. *State v. Dunn*, — M —, 472 P 2d 288.

**95-1806. Motion to suppress evidence illegally seized.****Timeliness of Motion**

Where confusion between the parties and the district court over state intention to drop or continue prosecution after defendant's conviction on assault charge caused delay in defendant's filing motion

to suppress illegally seized evidence until three days before trial, the motion was neither improper, nor did the fact that it was untimely constitute a waiver under the circumstances. *State v. Bentley*, — M —, 477 P 2d 345.

**CHAPTER 19—TRIAL IN DISTRICT COURT****95-1904. Presence of defendant—mistrial for absence.****Conclusive Presumptions**

Under this section there is conclusive presumption that defendant was present

at all stages of proceeding unless record affirmatively shows the contrary. *Petition of Eldiwitw*, 153 M 468, 457 P 2d 909.

**95-1910. Order of trial.****Admission of Testimony**

Where defendant was charged with commission of lewd and lascivious acts upon female under sixteen years of age, admission of testimony from twelve other witnesses concerning other such improper

actions before proof of corpus delicti, although possibly technical error under this section, was cured by later permitting prosecuting witness to take stand. *State v. Jensen*, 153 M 233, 455 P 2d 631.

**CHAPTER 21—POST-TRIAL MOTIONS****95-2101. New trial.****Newly Discovered Evidence**

Trial court did not err in denying defendant's motion for new trial based on newly discovered evidence in form of statements taken from two witnesses subsequent to trial where such statements

were found to contain certain discrepancies by police officers who investigated facts and questioned such individuals and where such evidence added nothing new beyond mere speculation to existing evidence. *State v. Quigg*, — M —, 467 P 2d 692.

**CHAPTER 22—SENTENCE AND JUDGMENT****95-2206. Sentence.****Good Behavior**

Defendant whose sentence for term of three years in state prison was ordered suspended during good behavior was improperly denied credit for time spent on parole when suspended sentence was re-

voked. *Barrows v. State*, — M —, 474 P 2d 145.

**Revocation of Deferred Sentence**

Where defendant was neither represented by counsel nor told of right to

have counsel present at hearing for revocation of deferred sentence, district court erred in denying defendant's motion to vacate the prison sentence that was imposed as a result of the revocation. *Petition of Brittingham*, — M —, 473 P 2d 830.

#### **Suspension of Sentence**

Where district court decision revoking

defendant's probation and imposing previously deferred sentence was reversed and remanded by supreme court three years later, defendant was placed in same status he had prior to district court's decision, so that sentence had not been suspended for more than three years contrary to subsection (2) of this section. *Petition of Brittingham*, — M —, 475 P 2d 34.

### **95-2213. Merger of sentences.**

#### **Concurrent Sentence Unless Specified**

Under this section, if district court does not specify whether sentence is to run concurrently or consecutively, it will run

concurrently with any prior commitment. *Petition of Parrett*, 154 M 257, 459 P 2d 268.

### **95-2215. Credit for incarceration prior to conviction.**

#### **Retroactive Application**

This section did not apply to prisoner who was sentenced after effective date of

this section for crime committed prior to such effective date. *Petition of Wilson*, 154 M 508, 463 P 2d 469.

### **95-2226. Sheriff's responsibility, etc.**

#### **Parole Violation**

This section did not apply to prisoner released on parole but not on furlough, and prisoner was not entitled to counsel

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## **CHAPTER 24—APPEAL BY STATE AND DEFENDANT**

### **95-2404. Scope of appeal.**

#### **Question of Law**

Contention by appellant that he was improperly sentenced for violation of Dangerous Drug Act due to lack of evidence necessary to overcome presumption regard-

ing sentencing of persons 21 years old or under was clearly legal question properly addressed to supreme court. *State v. Simtob*, 154 M 286, 462 P 2d 873.

### **95-2425. Substantial and insubstantial errors on appeal.**

#### **Technical Errors—Witness's Remarks**

Where trial court on defendant's motion directed state's witnesses not to reveal victim's pregnancy, fact that one witness

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### **95-2428. Indigent appeals.**

#### **Determining Financial Need**

It would have been unconscionable to permit proceeding in forma pauperis by petitioner whose income for previous year was \$13,000 and who had house, vehicles

and furniture worth over \$11,000, even though petitioner had only a small bank balance and owed over \$800 in taxes. *Petition of Allen*, — M —, 476 P 2d 510.

## **CHAPTER 25—APPELLATE REVIEW OF LEGAL SENTENCES**

### **95-2503. Review—decision.**

#### **Questions Reviewable**

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under Dangerous Drug Act was "illegal" under statutory presumption regarding sentencing. *State v. Simtob*, 154 M 286, 462 P 2d 873.

## CHAPTER 26—POST-CONVICTION HEARING

**95-2601. Petition in the trial court.**

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Idaho, Iowa, Maryland, Minnesota, Nevada, North Dakota, Oregon, South Carolina and South Dakota.

## CHAPTER 27—HABEAS CORPUS

**95-2716. No release for technical defects.****Technical Defects**

Where court intended to vacate sentence to permit representation by counsel but said that it was vacating judgment, this

was a mere technical defect and would not form the basis for habeas corpus. Petition of Eldiwitw, 153 M 468, 457 P 2d 909.





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# REVISED CODES OF MONTANA

## **SPECIAL 1971 SUPPLEMENT**

### *Containing*

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A. WAYNE GUERNSEY, A.B., J.D.

and

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**AMENDMENTS TO THE CONSTITUTION OF  
THE UNITED STATES**

**AMENDMENT 26**

1. The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

2. The Congress shall have the power to enforce this article by appropriate legislation.

The twenty-sixth amendment was submitted by Congress on January 21, 1971, declared in force July 5, 1971.

## TITLE 16—COUNTIES

### Chapter

#### 19. County budget system, 16-1904.

### CHAPTER 19—COUNTY BUDGET SYSTEM

#### Section

#### 16-1904. Hearings on budget—adoption—fixing tax levies.

16-1904. (4613.4) Hearings on budget—adoption—fixing tax levies.

(1) \* \* \* [Same as parent volume.]

(2) \* \* \* [Same as 1971 Pocket Part.]

(3) The board shall then determine and fix the amount to be raised for each fund by tax levy by adding together the cash balance in the fund at the close of the fiscal year immediately preceding and the amount of the estimated revenues, if any to accrue thereto during the current fiscal year, as before ascertained and determined, and then deducting the total amount so obtained from the total amount of the appropriations and authorized expenditures from the fund as determined and fixed by said board, the amount remaining being the amount necessary to be raised for the fund by tax levy during the current fiscal year; provided that the board may add to the amount so found necessary to be raised for any fund by tax levy during the current fiscal year, an additional amount as a reserve to meet and care for expenditures to be made from such fund during the months of July to November, inclusive, of the next ensuing fiscal year under the annual budget to be thereafter adopted for such next ensuing fiscal year, but the amount which may be so added to any fund, as such reserve for such purpose, shall not exceed one-third of the total amount appropriated and authorized to be expended from such fund during the current fiscal year, after deducting from the amount of such appropriations and authorized expenditures the total amount, if any, therein appropriated and authorized to be expended for election expenses and payment of emergency warrants; provided further that the total amount, to be raised by tax levy for any fund, during such current fiscal year, including the amount of such reserve and any amount for payment of election expenses and emergency warrants, must not exceed the total amount which may be raised for such fund by a tax levy which does not exceed the maximum levy permitted by law to be made for such fund.

If the cash balance remaining in any of the several county funds, except the school fund, at the end of a fiscal year, exceeds the amount to be budgeted to that fund, such excess may be transferred to other funds as the county commissioners deem for the best interest of the county after a public hearing. Notice of said hearing must be given not less than thirty (30) days prior to said hearing by publication in a news-



paper of general circulation in the county and by posting in five (5) public places. Said notice must state the date, time and place of said hearing and state generally the purpose and proposed use of said funds.

(4) to (6) \* \* \* [Same as parent volume.]

**History:** En. Sec. 4, Ch. 148, L. 1929; amd. Sec. 1, Ch. 98, L. 1937; amd. Sec. 1, Ch. 220, L. 1963; amd. Sec. 1, Ch. 178, L. 1969; amd. Sec. 1, Ch. 5, 2nd Ex. L. 1971.

read "Section 16-2048, R. C. M. 1947, is repealed."

**Effective Date**

Section 3 of Ch. 5, 2nd Ex. Laws 1971 provided the act should be in effect from and after its passage and approval. Approved June 29, 1971.

**Repealing Clause**

Section 2 of Ch. 5, 2nd Ex. Laws 1971

**16-2048. (4631) Repealed.**

**Repeal**

Section 16-2048 (Sec. 371, 5th Div. Rev. Stat. 1879), relating to transfer of surplus

county funds, was repealed by Sec. 2, Ch. 5, 2nd Ex. L. 1971.

## TITLE 23—ELECTIONS

### Chapter

33. Primary elections and nominations by certificate, 23-3318.1.

### CHAPTER 33—PRIMARY ELECTIONS AND NOMINATIONS BY CERTIFICATE

#### Section

23-3318.1. Determination of number of signatures required in census divisions.

**23-3318.1. Determination of number of signatures required in census divisions.** In the case of candidates for the Montana House of Representatives, the Montana Senate, and the Montana Constitutional Convention who may be required to run in districts embracing census enumerator divisions located in more than one county, the secretary of state shall, for those counties split along census enumerator divisions, determine the number of signatures needed for nominating petitions of independent candidates in such districts. The determination shall be based on the most recent federal census population figures for the district.

**History:** En. Sec. 1, Ch. 6, 2nd Ex. L. 1971.

#### Effective Date

Section 2 of Ch. 6, 2nd Ex. Laws 1971 read "This act is effective on its passage and approval and shall remain in effect until such time as the procedures in section 23-3318, R. C. M. 1947, can be followed."

#### Title of Act

An act to authorize the secretary of state to determine the number of signatures needed for nominating petitions of independent candidates; and providing an effective date.

## TITLE 32—HIGHWAYS, BRIDGES AND FERRIES

### Chapter

47. Outdoor advertising along highways, 32-4715 to 32-4728.

### CHAPTER 47—OUTDOOR ADVERTISING ALONG HIGHWAYS

- Section
- 32-4715. Legislative findings and policy—short title.
- 32-4716. Definition of terms.
- 32-4717. Outdoor advertising prohibited in proximity to highway—exceptions—standards and permits.
- 32-4718. Regulations controlling outdoor advertising.
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- 32-4726. Relaxation of regulations if federal law changed.
- 32-4727. Violation as misdemeanor.
- 32-4728. Nonconforming advertising as nuisance.

### 32-4701 to 32-4714. Repealed.

#### Repeal

Sections 32-4701 to 32-4714 (Secs. 1-14, Ch. 287, L. 1967; Sec. 1, Ch. 211, L. 1969; Secs. 1 to 4, Ch. 220, L. 1971), relating to

zoning and outdoor advertising, were repealed by Sec. 17, Ch. 2, 2nd Ex. Laws 1971.

**32-4715. Legislative findings and policy—short title.** (a) The legislature finds and declares that in order to promote the safety, convenience and enjoyment of travel on, and protection of the public investment in highways within this state, and to preserve and enhance the natural scenic beauty or aesthetic features of the highways and adjacent areas, it shall be the policy of this state that the erection and maintenance of outdoor advertising in areas adjacent to the right of way of the interstate and primary systems within this state shall be regulated in accordance with the terms of this act and the rules and regulations promulgated by the commission, pursuant thereto. It is the intention of the legislature in this act to provide a statutory basis for regulation of outdoor advertising consistent with the public policy relating to areas adjacent to the interstate and primary systems declared by Congress in Title 23, United States Code, "Highways."

(b) This act may be cited as the "Outdoor Advertising Act."

**History:** En. Sec. 1, Ch. 2, 2nd Ex. L. 1971.

#### Title of Act

An act to provide for the control of outdoor advertising adjacent to interstate

and primary highway systems in compliance with the Highway Beautification Act of 1965; repealing sections 32-4701 through 32-4714, R. C. M. 1947, and providing an effective date.

**32-4716. Definition of terms.** As used in this act: (a) "Interstate system" means that portion of the national system of interstate and



defense highways located within this state, as officially designated, or as may hereafter be so designated by the commission and approved by the secretary pursuant to the provisions of Title 23, United States Code, "Highways."

(b) "Primary system" means that portion of connected main highways, as officially designated or as may hereafter be so designated by the commission and approved by the secretary pursuant to the provisions of Title 23, United States Code, "Highways."

(c) "Outdoor advertising" means any outdoor sign, display, light, device, figure, painting, drawing, message, plaque, poster, billboard, or other structure which is designed, intended or used to advertise or inform and which is visible from any place on the main traveled way of the interstate or primary systems.

(d) "Commission" means the state highway commission of Montana.

(e) "Secretary" means the secretary of the United States department of transportation.

(f) "Safety rest area" means an area or site established and maintained within or adjacent to the right of way by or under public supervision or control, for the convenience of the traveling public.

(g) "Information center" means an area or site established or maintained at safety rest areas for the purpose of informing the public of places of interest within the state and providing such other information as the commission may consider desirable.

(h) "Visible" means capable of being seen, and legible, without visual aid by a person of normal visual acuity.

(i) "Commercial or industrial zone" means an area which is used or reserved for business, commerce, or trade pursuant to comprehensive local zoning ordinances or regulations, or enabling state legislation, or state legislation itself, including highway service areas lawfully zoned as highway service zones where the primary use of the land is used or reserved for commercial and roadside services, other than outdoor advertising, to serve the traveling public.

(j) "Unzoned commercial or industrial area" means an area not zoned by state or local law, regulation or ordinance which is occupied by one or more industrial or commercial activities, other than outdoor advertising, on the lands along the highway for a distance of six hundred (600) feet immediately adjacent to the activities, and those lands directly opposite on the other side of the highway to the extent of the same dimensions; provided, those lands on the opposite side of the highway are not deemed scenic or having aesthetic value as determined by the commission.

(k) "Commercial or industrial activities" means for purposes of subsection (j) those activities generally recognized as commercial or industrial by zoning authorities in this state, except that none of the following activities shall be considered commercial or industrial:

(i) Agricultural, forestry, grazing, farming and related activities including wayside fresh produce stands.

- (ii) Transient or temporary activities.
- (iii) Activities not visible from the main traveled way.
- (iv) Activities conducted in a building principally used as a residence.
- (v) Railroad tracks and minor sidings.
- (vi) Activities more than six hundred and sixty (660) feet from the nearest edge of the right of way.

(l) "Maintain" means to allow to exist, subject to the provisions of this act.

(m) "Maintenance" means to repair, refurbish, repaint or otherwise keep an existing sign structure in a state suitable for use.

(n) "Interchange" or "intersection" means those areas and their approach where traffic is channeled off or onto an interstate route including the de-acceleration lanes or acceleration lanes from or to another federal, state, county, city, or other route.

History: En. Sec. 2, Ch. 2, 2nd Ex. L.  
1971.

**32-4717. Outdoor advertising prohibited in proximity to highway—exceptions—standards and permits.** (a) No outdoor advertising shall be erected or maintained which is within six hundred and sixty (660) feet of the nearest edge of the right of way and which is visible from any place on the main traveled way, of an interstate or primary system, except:

(i) Directional and other official signs and notices, which signs and notices shall include, but not be limited to, signs and notices pertaining to natural wonders, scenic and historical attractions, as authorized or required by law.

(ii) Signs, displays and devices advertising the sale or lease of property upon which they are located.

(iii) Signs, displays and devices advertising activities conducted on the property upon which they are located.

(iv) Signs, displays and devices located in areas which are zoned industrial or commercial by a bona fide state, county or local zoning authority.

(v) Signs, displays and devices located in unzoned commercial or industrial areas, which areas shall be determined from actual land uses and by agreement between the commission and the secretary and defined by regulations promulgated by the commission. The exception granted by this subsection shall not apply to signs, displays and devices located within an unzoned area in which the commercial or industrial activity used in defining the area has ceased for a period of nine (9) months.

(b) Outdoor advertising authorized under subsections (i), (iv), and (v) of subsection (a) of this section shall conform with standards contained in, and shall bear permits required in, regulations which are promulgated by the commission and this act.

History: En. Sec. 3, Ch. 2, 2nd Ex. L.  
1971.

**32-4718. Regulations controlling outdoor advertising.** The commission is hereby authorized to make and promulgate regulations to control the erection and maintenance of outdoor advertising along the interstate and primary highway systems in conformance with the terms of this act and in conformity with section 131 of Title 23, United States Code, as amended.

**History:** En. Sec. 4, Ch. 2, 2nd Ex. L.  
1971.

**32-4719. Standards for permitted advertising.** Signs permitted under section 3 [32-4717] (a) (i), (ii), (iii), (iv), and (v) shall conform to the following requirements:

(a) Signs shall not be erected or maintained which exceed 1,200 square feet in area including border and trim, but excluding base or apron, supports, and other structural members.

(b) Maximum length—60 feet.

(c) Maximum height—40 feet, as measured from the ground or, if the sign is attached to a structure, as measured from the base of the sign itself.

(d) No more than two facings visible and readable from the same direction on the main traveled way may be erected on any one sign structure. Whenever two facings are so positioned, neither shall exceed 325 square feet.

(e) Double-faced, back-to-back and V-type signs shall be considered as a single sign or structure.

(f) No two signs shall be spaced less than five hundred (500) feet apart adjacent to an interstate highway, or limited-access primary highway except that signs may be erected closer than five hundred (500) feet if they are separated by buildings or other obstructions in such a manner that only one sign facing located within the above spacing distance is visible from the highway at any one time.

(g) Signs may not be located within five hundred (500) feet of any of the following which are adjacent to the highway; unless such signs are in an incorporated area:

(i) Public parks.

(ii) Public forests.

(iii) Public playgrounds.

(iv) Scenic areas designated as such by the state highway department or other state agency having and exercising such authority.

(v) Cemeteries.

(h) No sign may be located on an interstate highway or freeway within five hundred (500) feet of an interchange, or intersection at grade, or rest area. Said five hundred (500) feet is to be measured along the interstate or freeway from the beginning or ending of the pavement widening at the exit from or entrance to the main traveled way.

(i) Signs may be illuminated, subject to the following restrictions:

(i) Signs which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights are prohibited, except those giving



public service information such as time, date, temperature, weather or similar information.

(ii) Signs which are not effectively shielded as to prevent beams or rays of light from being directed at any portion of the traveled ways of the interstate or federal-aid primary highway or which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or which otherwise interfere with any driver's operation of a motor vehicle are prohibited.

(iii) No sign shall be so illuminated that it interferes with the effectiveness of, or obscures an official traffic sign, device, or signal.

(j) The location of sign structures situated on the primary highways between streets, roads or highways entering or intersecting the main traveled way shall conform to the following minimum spacing criteria:

(i) Where the distance between centerlines of intersecting streets or highways is less than one thousand (1,000) feet, a minimum spacing between structures of one hundred fifty (150) feet may be permitted between the intersecting streets or highways.

(ii) Where the distance between centerlines of intersecting streets or highways is one thousand (1,000) feet or more, minimum spacing between sign structures shall be three hundred (300) feet.

**History:** En. Sec. 5, Ch. 2, 2nd Ex. L.  
1971.

**32-4720. Permits required—identification tags—pre-existing structures.** Within ninety (90) days after the effective date of this act, no signs authorized by subsections (i), (iv), and (v) of subsection (a) of section 3 [32-4717] may be constructed or maintained without a permit. Applications for permits shall be made to the commission on forms furnished by it. The commission shall require reasonable information to be furnished, including a statement that the owner or occupant of the land has consented to the erection or maintenance of the sign or signs thereon. A permit must be obtained for each sign and the application for the permit must be accompanied by an initial fee of six dollars (\$6).

Permits shall be issued for three (3) years, assigned a permit number, and renewed every three (3) years thereafter upon payment of three dollars (\$3) without the filing of a new application. All fees received shall be paid into the state highway account in the earmarked revenue fund.

The commission shall issue with each new permit a permanent identification tag not larger than six (6) square inches which shall be affixed to the sign in a position readily visible from the highway.

Notwithstanding the foregoing provisions of this section, the commission shall issue permits and identification tags, upon application and payment of the requisite fee for any structure lawfully in existence on the day prior to the effective date of this act, and the permits shall thereafter be renewed for such period of time as is prescribed herein, unless the structure is removed for improper maintenance.

**History:** En. Sec. 6, Ch. 2, 2nd Ex. L.  
1971.

**32-4721. Notice of violations—remedial action.** When the commission determines that a willful false or misleading statement has been made in the application for a permit or that the structure for which a permit was issued is not in a reasonable state of repair, or is unsafe, the commission shall notify the holder of the permit in writing, either by certified mail or by personal service, of the violation and specify that remedial action shall be taken within sixty (60) days or the permit will be revoked and action for removal of the sign commenced as provided in section 8 [32-4722] of this act. No notice is required prior to filing a complaint after the notice period has lapsed.

**History:** En. Sec. 7, Ch. 2, 2nd Ex. L.  
1971.

**32-4722. Advertising deemed unlawful—notice to remove—hearing—appeal to district court.** (a) The following outdoor advertising is deemed unlawful:

(i) When erected after the effective date of this act contrary to the provisions of this act; or

(ii) When a permit is not obtained as prescribed in this act; or

(iii) When a permittee fails to comply with a notice of violation as provided in section 7 [32-4721] of this act.

(b) The commission shall give notice in writing, either by certified mail or by personal service, to the owner or occupant of the land on which advertising believed to be unlawful is located and the owner of the outdoor advertising structure, if the latter is known, or if unknown, by posting notice in a conspicuous place on said structure, of its intention to remove the advertising deemed unlawful. Within forty-five (45) days after the notice, the owner of the land or of the structure may make written request for a hearing before the commission to show cause why the structure should not be removed. The commission shall keep a full and complete transcript and record of such hearing, make and enter its findings, conclusions and decisions in the matter and mail copies thereof by certified mail to the party or parties requesting the hearing.

The decision of the commission may be appealed to the district court in the county in which the structure is located. The court shall sustain the decision of the commission if it is supported by substantial evidence as shown by the records and exhibits. If there is no appeal from the commission's decision or if the commission's decision is affirmed, the party or parties requesting the appeal shall be liable for all costs incurred by the commission. Appeals shall be taken within thirty (30) days of the commission's decision by filing a notice and sending a copy of the notice to the commission by certified mail.

The commission shall forward its transcripts, records and exhibits to the district court having jurisdiction within thirty (30) days after receiving notice of such appeal. Appellant shall pay all costs of transcript and records.

If a hearing before the commission is not requested, or if there is no appeal taken from the commission's decision at such hearing, or if the commission's decision is affirmed on appeal, the commission shall imme-

diately remove the unlawful outdoor advertising. The owner of the structure and the owner or occupant of the land shall be jointly and severally liable for the costs of such removal. The commission shall incur no liability for causing this removal, except for damage caused by negligence of the commission, its agents or employees.

**History:** En. Sec. 8, Ch. 2, 2nd Ex. L.  
1971.

**32-4723. Acquisition of outdoor advertising rights—compensation.**

(a) The commission is hereby empowered and authorized to acquire by gift, purchase, agreement, exchange or eminent domain, any existing outdoor advertising and all property rights pertaining to same which were lawfully in existence on the effective date of this act, and which by reason of this act become nonconforming. Eminent domain shall be exercised in accordance with the provisions of the laws of the state of Montana.

(b) Just compensation shall be paid for outdoor advertising and all property rights pertaining to the same acquired through the process of eminent domain. The commission is empowered to remove outdoor advertising found in violation of section 7 [32-4721] or 8 [32-4722] of this act without payment of compensation.

(c) Despite any contrary provision in this act, no sign shall be required to be removed without just compensation, unless found to be in violation of section 7 [32-4721] or 8 [32-4722] of this act. Except as provided in said sections 7 and 8 no sign shall be required to be removed unless at the time of removal or discontinuance there are sufficient funds, from whatever source, appropriated and immediately available to pay the just compensation required under this section, and unless at such time the federal funds required to be contributed under section 131 (g) of Title 23, United States Code, with respect to the outdoor advertising being removed, have been apportioned and are immediately available to this state.

**History:** En. Sec. 9, Ch. 2, 2nd Ex. L.  
1971.

**32-4724. Agreements with secretary establishing specifications for advertising.** The highway commission of the state of Montana is authorized to enter into an agreement with the secretary regarding the size, lighting and spacing of outdoor advertising, as provided in this act, which may be erected and maintained within the areas adjacent to the interstate and primary highway system which are zoned commercial, industrial, or in such other unzoned commercial or industrial areas as may be determined by agreement, and as provided in this act.

**History:** En. Sec. 10, Ch. 2, 2nd Ex. L.  
1971.

**32-4725. More restrictive regulations preserved.** Nothing in this act shall be construed to abrogate or affect the provisions of any lawful ordinance, regulation or resolution, which is more restrictive than the provisions of this act.

**History:** En. Sec. 11, Ch. 2, 2nd Ex. L.  
1971.



**32-4726. Relaxation of regulations if federal law changed.** In the event the general requirements of Title 23, United States Code, "Highways," or existing rules and regulations of the United States department of transportation become amended or changed to less restrictive conditions than presently exist, then, the commission must amend or change such rules and regulations that it may have adopted to come into conformity with the federal law, rule and regulation; however, in no event shall this act become more restrictive than is indicated herein by said federal action.

**History:** En. Sec. 12, Ch. 2, 2nd Ex. L. 1971.

**Nonconforming Uses**

Section 13, Ch. 2, 2nd Ex. L. 1971, read: "Outdoor advertising contracted for prior to the enactment of this act and which under the provisions of the act becomes nonconforming shall not be regulated as such until January 1, 1972."

**Separability Clause**

Section 14 of Ch. 2, 2nd Ex. Laws 1971 read "If any provision of this act, or the application of any provision to any person or circumstance, is held invalid, the remainder of this act shall not be affected thereby."

**32-4727. Violation as misdemeanor.** Any person violating any provision of this act is guilty of a misdemeanor.

**History:** En. Sec. 15, Ch. 2, 2nd Ex. L. 1971.

**32-4728. Nonconforming advertising as nuisance.** All outdoor advertising which does not conform to the requirements of this act are public nuisances.

**History:** En. Sec. 16, Ch. 2, 2nd Ex. L. 1971.

**Repealing Clause**

Section 17 of Ch. 2, 2nd Ex. Laws 1971 read "Sections 32-4701 through Section 32-4714, R. C. M. 1947, are hereby repealed."

**Effective Date**

Section 18 of Ch. 2, 2nd Ex. Laws 1971 provided the act should be in effect from and after its passage and approval. Approved June 24, 1971.

## TITLE 43—LEGISLATURE AND ENACTMENT OF LAWS

### Chapter

1. Senatorial, representative and congressional districts, 43-106.6 to 43-106.9.

### CHAPTER 1—SENATORIAL, REPRESENTATIVE AND CONGRESSIONAL DISTRICTS

#### Section

- 43-106.6. Number of senators—senatorial districts and apportionment.  
43-106.7. Number of representatives—representative districts and apportionment.  
43-106.8. Division of multi-member districts into single-member districts.  
43-106.9. Adjustment of senatorial terms.

#### 43-106.1, 43-106.2. Repealed.

##### Repeal

Sections 43-106.1, 43-106.2 (Secs. 1, 2, Ch. 194, L. 1967), relating to legislative

apportionment, were repealed by Sec. 6, Ch. 8, 2nd Ex. Laws 1971.

#### 43-106.3 to 43-106.5. Unconstitutional.

##### Unconstitutional

These sections (Secs. 1, 2, 4, Ch. 3, 1st Ex. L. 1971) were held unconstitutional by a three-judge federal court in a decision rendered on June 11, 1971, in *Wold v. Anderson*, 28 Montana St. Rep. 585, — F. Supp. —.

#### 43-106.6. Number of senators—senatorial districts and apportionment.

The senate of the legislative assembly shall consist of fifty (50) members. The senatorial districts and the number of senators elected from each district are as follows:

Senatorial District Number	Number of Senators	District consists of County or Counties
1	1	Big Horn, Powder River, Carter, less Ekalaka census enumerator division of Carter
2	1	Custer and Ekalaka census enumerator division of Carter
3	2	Richland, Dawson, Wibaux, Fallon
4	2	Sheridan, Roosevelt, Daniels and Valley less the Fort Peck and Hinsdale census enumerator divisions of Valley
5	1	Blaine, Phillips and the Fort Peck and Hinsdale census enumerator divisions of Valley
6	1	Garfield, Rosebud, McCone, Prairie and Treasure

Senatorial District Number	Number of Senators	District consists of County or Counties
7	1	Stillwater, Carbon and south of the Yellowstone census enumerator division of Sweet Grass
8	6	Yellowstone less the Buffalo Creek census enumerator division, the Shepherd enumerator division and the Huntley Project census enumerator division
9	1	Meagher, Wheatland, Golden Valley, Musselshell and north of the Yellowstone census enumerator division of Sweet Grass and Buffalo Creek census enumerator division and Huntley Project enumerator division of Yellowstone and Shepherd division of the census enumerator of Yellowstone
10	1	Fergus and Petroleum
11	3	Gallatin and Park
12	3	Broadwater, Jefferson and Lewis and Clark
13	6	Cascade
14	2	Hill, Chouteau, Judith Basin and Liberty
15	2	Glacier, Toole, Pondera, Teton
16	3	Flathead
17	1	Lake
18	4	Missoula less Bonner-Clinton census enumerator division of Missoula
19	2	Powell, Deer Lodge, Granite and Bonner-Clinton census enumerator division of Missoula
20	3	Silver Bow
21	1	Madison and Beaverhead
22	1	Ravalli
23	2	Mineral, Sanders and Lincoln

**History:** En. Sec. 1, Ch. 8, 2nd Ex. L. 1971. ssembly according to the 1970 federal census; and repealing sections 43-106.1 and 43-106.2, R. C. M. 1947.

**Title of Act**

An act to apportion the legislative as-

**43-106.7. Number of representatives—representative districts and apportionment.** Representatives of the legislative assembly shall consist of one hundred (100) members. The representatives elected from each district are as follows:



Representative District Number	Number of Representatives	District consists of County or Counties
1	2	Big Horn, Powder River, Carter less Ekalaka census enumerator division of Carter
2	2	Custer and Ekalaka census enu- merator division of Carter
3	4	Richland, Dawson, Wibaux, and Fallon
4	4	Sheridan, Roosevelt, Daniels and Valley, less the Fort Peck and Hinsdale census enumerator divi- sions of Valley
5	2	Blaine, Phillips and the Fort Peck and Hinsdale census enumerator divisions of Valley
6	2	Garfield, Rosebud, McCone, Prairie and Treasure
7	2	Stillwater, Carbon and south of the Yellowstone census enumera- tor division of Sweet Grass
8	12	Yellowstone less the Buffalo Creek census enumerator division, the Shepherd enumerator division and the Huntley Project census enumerator division
9	2	Meagher, Wheatland, Golden Val- ley, Musselshell and north of the Yellowstone census enumerator division of Sweet Grass and Buf- falo Creek census enumerator di- vision and Huntley Project enu- merator division and Shepherd division of the census enumerator of Yellowstone
10	2	Fergus and Petroleum
11	6	Gallatin and Park
12	6	Broadwater, Jefferson and Lewis and Clark
13	12	Cascade
14	4	Hill, Chouteau, Judith Basin and Liberty
15	4	Glacier, Toole, Pondera, Teton
16	6	Flathead
17	2	Lake

Representative District Number	Number of Representatives	District consists of County or Counties
18	8	Missoula less Bonner-Clinton census enumerator division of Missoula
19	4	Powell, Deer Lodge, Granite and Bonner-Clinton census enumerator division of Missoula
20	6	Silver Bow
21	2	Madison and Beaverhead
22	2	Ravalli
23	4	Mineral, Sanders and Lincoln

History: En. Sec. 2, Ch. 8, 2nd Ex. L. 1971.

**43-106.8. Division of multi-member districts into single-member districts.** A multi-member district may be divided into single-member districts within a senatorial district in the following manner:

(1) Eight per cent (8%) of the registered voters of the multi-member district as determined by the last registration lists applicable to the counties in such multi-member districts must first petition and said petition shall substantially meet all of the requirements of a petition for initiative and referendum as provided in sections 37-101, 37-102 and 37-103, R. C. M. 1947, for such division. If the multi-member district is located within a single county, the petition signed by the required number of voters shall be filed with the clerk and recorder of that county. If the multi-member district embraces areas in more than one (1) county, the required petition shall be filed in the office of the clerk and recorder of any county embraced in whole or in part in the district and certified copies of such petition shall be sent by that clerk and recorder to the clerks and recorders of all other counties embraced in whole or in part in such multi-member districts.

(2) The clerks and recorders with whom such petitions, whether originals or certified copies, are filed shall as promptly as possible examine such petition as to the signatures thereon which are of residents of their respective counties and shall certify to the clerk and recorder of the county in which the original petition was filed as to the number of valid signatures on said petition as to the number of registered voters in their respective counties and included within the multi-member district. The clerk and recorder with whom the original petition was filed shall also as promptly as possible examine the petition as to the signatures thereon which are of residents of his county and shall determine the number of valid signatures as to his county. Upon receipt of the certificates of the other clerks and recorders, the clerk and recorder with whom the original petition was filed shall total the number of valid signatures on said petition and, if such petition contains valid signatures of at least eight per cent (8%) of the registered voters of the multi-member district, he shall

so certify to the county commissioners of each county affected in whole or in part.

(3) The county commissioners of each county affected in whole or in part, upon receipt of the certification by the clerk and recorder, shall meet together as promptly as possible and shall establish a time of election, at which shall be presented the question whether the district shall be divided into single-member districts.

(4) If a majority of the voters voting at such election shall vote in favor of dividing the multi-member district, the county commissioners of the affected counties shall meet together as promptly as possible after the results of such election have been certified, and shall divide the multi-member district into single-member districts. Any such plan of division shall require the approval of the majority of the commissioners of each of the counties affected.

(5) Single-member districts shall be as compact as possible, comprise contiguous territory and shall be as nearly equal as practicable in population. Boundaries of the single-member districts shall follow the census enumerator division lines.

History: En. Sec. 3, Ch. 8, 2nd Ex. L.  
1971.

**43-106.9. Adjustment of senatorial terms.** The senators shall be elected for the term of four (4) years and they shall be divided into two (2) classes with terms concluding in alternate bienniums. The terms of office of those senators in districts 8, 13, 16, 17, 18, 20, 21 and 22 will continue as they presently exist, and they will run for re-election upon expiration of their present terms of office. The terms of office of all other senators will expire on the first Monday of January, 1973.

The senators elected in districts 1, 2, 5 and 6 shall be elected for a term of four (4) years. The senators elected in districts 3, 4, 11, 12, 14, 15, 19 and 23 shall, pursuant to the regulations to be promulgated by the secretary of state, draw lots for the purpose of determining which of said elected senators of said districts shall serve for four (4) years and which shall serve for two (2) years to the end that in each of the said districts, in so far as possible, one-half ( $\frac{1}{2}$ ) of the senators shall serve for four (4) years and one-half ( $\frac{1}{2}$ ) for two (2) years; provided, however, that in districts 11 and 12 the senators there elected shall draw lots to determine which one of the three in each district shall be subject to the drawing hereinafter mentioned.

The remaining senators from districts 11 and 12 shall themselves draw lots to determine which shall serve for four (4) years and which shall serve for two (2) years. The names of elected senators from districts 7, 9 and 10 including the one (1) from each of districts 11 and 12, aforesaid, shall be placed in a receptacle from which the secretary of state shall draw three (3) names. The senators whose names are thus drawn shall serve for four (4) years and the remainder not drawn shall serve for two (2) years.



**History:** En. Sec. 4, Ch. 8, 2nd Ex. L. 1971.

**Separability Clause**

Section 5 of Ch. 8, 2nd Ex. Laws 1971 read "If any clause, sentence, paragraph, section, or any part of this act shall be declared and adjudged to be invalid and/or unconstitutional, such invalidity or unconstitutionality shall not affect, impair, invalidate or nullify the remainder of this act."

**Repealing Clause**

Section 6 of Ch. 8, 2nd Ex. Laws 1971 read "Sections 43-106.1 and 43-106.2, R. C. M. 1947, are repealed."

**Effective Date**

Section 7 of Ch. 8, 2nd Ex. Laws 1971 provided the act should be in effect from and after its passage and approval. Approved June 29, 1971.

## TITLE 81—STATE LANDS

### Chapter

#### 10. Investments, 81-1001.

### CHAPTER 10—INVESTMENTS

#### Section

##### 81-1001. Investment of permanent funds.

**81-1001. (1805.98) Investment of permanent funds.** All moneys belonging to the public school permanent fund and to the other permanent funds of the educational, charitable and penal institutions of the state, and all permanent funds subject to the administration of the board under article XXI of the state constitution, shall be carried by the state treasurer as subfunds in the trust and legacy fund, and shall be safely invested by the state board of land commissioners in bonds of school districts within the state of Montana; in bonds of the several counties and cities of the state of Montana; in bonds of the state of Montana or of the United States; bonds fully guaranteed by the United States as to principal and interest; in capitol building bonds of the state of Montana, now issued or which may hereafter be issued; in bonds issued by the federal land banks, in interest-bearing warrants upon the general fund of the state and in interest-bearing warrants upon the general fund, the poor fund, the road fund, or upon the bridge fund of the several counties of the state of Montana; all of such investments to be subject to the regulations and limitations of this act.

**History:** En. Sec. 98, Ch. 60, L. 1927; amd. Sec. 2, Ch. 139, L. 1933; amd. Sec. 224, Ch. 147, L. 1963; amd. Sec. 1, Ch. 1, 2nd Ex. L. 1971.

#### Effective Date

Section 2 of Ch. 1, 2nd Ex. Laws 1971 provided the act should be in effect from and after its passage and approval. Approved June 15, 1971.

## TITLE 84—TAXATION

### Chapter

15. License taxes—corporation license tax, 84-1501, 84-1501.8.

49. Income tax, 84-4902.1.

Appendix. The 1971 Montana Revenue Act.

### CHAPTER 15—LICENSE TAXES—CORPORATION LICENSE TAX

#### Section

84-1501. Corporation license tax—organizations exempt therefrom.

84-1501.8. Effective date of rate change—reduced rate in future—effect of referendum.

**84-1501. (2296) Corporation license tax—organizations exempt therefrom.** The term corporation includes associations, joint-stock companies, common-law trusts and business trusts which do business in an organized capacity whether created under and pursuant to the state laws, agreements, declarations of trust. Every corporation, except as hereinafter provided and except as provided in section 40-2821 (5), R. C. M. 1947, organized and existing under the laws of the state of Montana and engaged in business therein, shall annually pay to the state treasurer, as a license fee for carrying on business in said state of Montana, such percentage or percentages of total net income received by such corporation in the preceding fiscal year from all sources within the state of Montana as hereinafter set forth; and every corporation, except as hereinafter provided, and except as provided in section 40-2821 (5), R. C. M. 1947, organized and existing under the laws of any other state or country, or the United States, and engaged in business in the state of Montana, shall annually pay for the exclusive use and benefit of the state of Montana a license fee for carrying on its business in the state of Montana of such percentage or percentages of total net income received by such corporation in the preceding fiscal year from all sources within the state of Montana as hereinafter set forth.

The percentage of net income to be paid under this section shall be six and three-quarters per cent ( $6\frac{3}{4}\%$ ) of all net income for the taxable period. The rate set forth in this act shall be effective for all taxable years ending on or after February 28, 1971. Every corporation subject to taxation under this act shall, in any event, pay a minimum tax of not less than fifty dollars (\$50).

There shall not be taxed under this title any income received by any—  
(a) to (k) \* \* \* [Same as parent volume.]

**History:** En. Sec. 1, Ch. 79, L. 1917; Subd. 16 amd. Sec. 1, Ch. 64, L. 1921; re-en. Sec. 2296, R. C. M. 1921; amd. Sec. 1, Ch. 166, L. 1933; amd. Sec. 1, Ch. 29, L. 1937; amd. Sec. 1, Ch. 92, L. 1937; amd. Sec. 1, Ch. 232, L. 1957; amd. Sec. 1, Ch. 264, L. 1959; amd. Sec. 1, Ch. 155, L. 1961; amd. Sec. 1, Ch. 269, L. 1965; amd. Sec. 1, Ch. 4, Ex. L. 1967; amd. Sec. 1, Ch. 11, Ex. L. 1969; amd. Sec. 1, Ch. 16, L. 1971; amd. Sec. 1, Ch. 333, L. 1971; amd. Sec. 1, Ch. 5, Ex. L. 1971; amd. Sec. 1, Ch. 7, 2nd Ex. L. 1971.



**84-1501.8. Effective date of rate change—reduced rate in future—effect of referendum.** The rate set forth in this act shall be effective as to all taxable years ending on or after February 28, 1971, whether on the calendar or fiscal year basis.

For taxable years ending on or after February 28, 1973, the percentage of net income to be paid under this act shall be six and one-quarter per cent (6¼%) of all net income for the taxable period. In the event a majority of the electors voting at the November 2, 1971 referendum election vote in the affirmative for the reduction of the forty per cent (40%) income tax surtax to ten per cent (10%) the rate for corporate license tax for taxable years ending on or after February 28, 1972 shall be six and one-quarter per cent (6¼%) of all net income for the taxable period.

**History:** En. Sec. 2, Ch. 7, 2nd Ex. L. 1971.

to six and three-quarters per cent (6¾%); and providing an effective date.

#### Title of Act

An act to amend section 84-1501, R. C. M. 1947, as amended by chapter 333, Session Laws of 1971, to provide that the corporation license tax be increased

#### Effective Date

Section 3 of Ch. 7, 2nd Ex. Laws 1971 provided the act should be in effect from and after its passage and approval. Approved June 29, 1971.

### CHAPTER 49—INCOME TAX

#### Section 84-4902.1. Surtax.

**84-4902.1. Surtax.** After the amount of tax liability has been computed for all taxable years commencing on or after December 31, 1970 but before December 31, 1972, each person filing a Montana individual income tax return shall add, as a surtax, forty per cent (40%) of the tax liability, and the amount so arrived at is the amount due the state of Montana. Thereafter the surtax shall be ten per cent (10%) of the tax liability.

**History:** En. Sec. 2, Ch. 10, Ex. L. 1969; amd. Sec. 40, Ch. 9, 2nd Ex. L. 1971.

this section shall be amended to read: "After the amount of tax liability has been computed for all taxable years commencing on or after December 31, 1970 but before December 31, 1971, each person filing a Montana individual income tax return shall add, as a surtax, forty per cent (40%) of the tax liability and the amount so arrived at is the amount due the state of Montana. Thereafter the surtax shall be ten per cent (10%) of the tax liability."

#### Effective Date—Conditional Amendment

Section 46, Ch. 9, 2nd Ex. Laws 1971, provides that "Section 40 \* \* \* shall be effective upon passage and approval." Approved July 1, 1971.

Section 44, Ch. 9, 2nd Ex. Laws 1971, provides that if the 1971 Montana Revenue Act (Title 84 Appendix) is approved in the referendum of November 2, 1971,

### APPENDIX—THE 1971 MONTANA REVENUE ACT :

Chapter 9, 2nd Ex. L. 1971, enacted "The 1971 Montana Revenue Act," providing for a sales tax and use tax in lieu of a portion of the surtax on the income tax, subject to referendum at a special general election to be held on November 2, 1971. The act read as follows:

An act providing for a referendum to be submitted to the electors in November 1971 for a law which provides for the levying of a two per cent (2%) sales and use tax to support state government; providing for the administration thereof and for penalty in case of violation thereof; providing for an income tax refund

or credit for sales and use tax upon food, drugs and related items; providing an increase in income tax surtax to forty per cent (40%) by amending section 84-4902.1, R. C. M. 1947, for calendar year 1971 if the referendum passes; providing for the continuance of such surtax rate to December 31, 1972 if the referendum

fails; providing for repeal of acts or parts of acts in conflict herewith and providing effective dates.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

**Section 1. Title of Act.** This act is known and may be cited as "The 1971 Montana Revenue Act."

**Section 2. Definitions.** The following words, terms, and phrases shall have the meanings ascribed to them in this section, except when the context clearly indicates a different meaning:

(1) "Person" means any individual, firm, copartnership, co-operative, non-profit membership corporation, joint venture, association, corporation, estate, trust, business trust, trustee in bankruptcy, receiver, auctioneer, syndicate, assignee, club, society, or other group or combination acting as a unit, body politic or political subdivision, whether public or private, or quasi-public, and the plural as well as the singular number.

(2) "Sale" means any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property and any rendition of a taxable service for a consideration, and includes the fabrication of tangible personal property for consumers who furnish, either directly or indirectly, the materials used in fabrication; and the furnishing, preparing, or serving for a consideration of any tangible personal property consumed on the premises of the person furnishing, preparing, or serving such tangible personal property. A transaction whereby the possession of property is transferred but the seller retains title as security for the payment of the price shall be deemed a sale.

(3) "Retail sale" or a "sale at retail" means a sale to a consumer or to any person for any purpose other than for resale in the form of tangible personal property or services taxable under this act, and includes any such transaction as the state board of equalization upon investigation finds to be in lieu of a sale; but sales for resale must be made in strict compliance with rules and regulations made under this act. Any person making a sale for resale which is not in strict compliance with such rules and regulations shall himself be liable for and pay the tax. "Retail sale" and a "sale at retail" include:

(i) the sale or charges for any room or rooms, lodging or accommodations fur-

nished to transients by any hotel, motel, inn, tourist camp, tourist cabin, camping grounds, club, or any other place in which rooms, lodging, space, or accommodations are regularly furnished to transients for a consideration. A transient is a person who occupies rooms, lodgings, or accommodations for less than a period of sixty (60) continuous days.

(ii) sales of tangible personal property to persons for resale if, because of the operation of the business or its very nature, or the lack of a place of business in which to display a certificate of registration, or the lack of a place of business in which to keep records, or the lack of adequate records, or because the persons are minors or transients, or because the persons are engaged in essentially service businesses, or for any other reason, there is likelihood that the state will lose tax funds due to the difficulty of policing the business operations. The state board of equalization may promulgate rules and regulations requiring vendors of or sellers to such persons to collect the tax imposed by this act on the cost price of the tangible personal property to such persons and may refuse to issue certificates of registration to such persons.

(iii) the sale or charge of admissions.

(iv) the charge for the service of printing or imprinting, photographing, or copying by any means whatsoever for a consideration for persons who furnish either directly or indirectly the materials used in conjunction with the rendition of the service.

(v) the charge for barber and beauty services to persons and animals for a consideration whether or not any tangible personal property is transferred in conjunction with the performance of the service.

(vi) the charge for motor vehicle parking service or parking space in privately owned parking lots or garages and the charge for docking or storage space for boats in privately owned boat docks or marinas.

(vii) the furnishing of intrastate telephonic and telegraphic communications and services.

(4) "Gross sales" means the sum total of all retail sales of tangible personal property or services as defined in this act, without any deduction whatsoever of any kind or character, except as provided in this act. "Gross sales" do not include the federal retailers' excise tax if this excise tax is billed to the purchaser separately from the selling price of the article, or the retail sales or use tax, or any sales tax imposed by any county or city.

(5) "Sales price" means the total amount for which tangible personal property or services are sold, including any services that are a part of the sale, valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to purchaser, consumer, or lessee by the dealer, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, losses or any other expenses whatsoever; but cash discounts allowed and taken on sales are not included in the sales price; nor shall the sales price include finance charges, carrying charges, service charges or interest from credit extended on sales of tangible personal property under conditional sales contracts or other conditional contracts providing for deferred payments of the purchase price or transportation charges separately stated. If used articles are taken in trade, or in a series of trades as a credit or part payment on the sale of new or used articles, the tax levied by this act shall be paid on the net difference between the sales price of the new or used articles and the credit for the used articles. In the case of motor vehicles the proceeds of the tax levied under this act shall be deposited in the general fund and not credited to the state highway fund irrespective of any other provision of law.

(6) "Cost price" means the actual cost of an item or article of tangible personal property computed in the same manner as the sales price in subparagraph (5) of this section without any deductions therefrom on account of the cost of materials used, labor, or service costs, transportation charges, or any expenses whatsoever.

(7) "Lease or rental" means the leasing or renting of tangible personal property and the possession of use thereof by the lessee or rentee for a consideration, without transfer of the title to the property.

(8) "Distribution" includes the transfer or delivery of tangible personal property for use, consumption, or storage by the distributee, and the use, consumption, or storage of tangible personal property by a person who has processed, manufactured, refined, or converted the property, but does not include the transfer or delivery of tangible personal property for resale or any use, consumption, or storage otherwise exempt under this act.

(9) "Gross proceeds" means the charges made or voluntary contributions received for the lease or rental of tangible personal property or for furnishing services, computed with the same deductions, where applicable, as for sales price in

subsection (b) of this section over the term of the lease, rental, service, or use, but not less frequently than monthly.

(10) "Storage" means any keeping or retention of tangible personal property for use, consumption or distribution in this state, or for any purpose other than the sale at retail in the regular course of business.

(11) "Use" means the exercise of any right or power over tangible personal property incident to the ownership thereof, except that it does not include the sale at retail of that property in the regular course of business.

(12) "Business" means any activity engaged in by any person, or caused to be engaged in by him, with the object of gain, benefit or advantage, either direct or indirect.

(13) "Retailer" means every person engaged in the business of making sales of tangible personal property and taxable services as defined in this act.

(14) "Tangible personal property" means personal property, which may be seen, weighed, measured, felt, or touched, or is in any other manner perceptible to the senses. The term "tangible personal property" does not include stocks, bonds, notes, insurance or other obligations or securities.

(15) "Use tax" means the tax imposed upon the use, consumption, distribution, and storage of tangible personal property as herein defined.

(16) "In this state" or "in the state" means within the exterior limits of the state of Montana and includes all territory within these limits owned by or ceded to the United States of America.

(17) The words "import" and "imported" apply to tangible personal property imported into this state from other states as well as from foreign countries, and the words "export" and "exported" apply to tangible personal property exported from this state to other states as well as to foreign countries.

**Section 3. Imposition of sales tax.**  
There is hereby levied and imposed, in addition to all other taxes and fees of every kind now imposed by law, a license or privilege tax upon every person who engages in the business of selling at retail or distributing tangible personal property in this state, or who rents or furnishes any of the things or services taxable under this act, or who stores for use or consumption in this state any item or article of tangible personal property as defined in this act, or who leases or rents such property within this state, the same to be collected in the amount to be



determined by applying the rate of two per cent (2%) to:

(1) the sales price of each item or article of tangible personal property when sold at retail or distributed in state, the tax to be computed on gross sales.

(2) the gross proceeds derived from the lease or rental of tangible personal property, as defined in this act, where the lease or rental of such property is an established business, or part of an established business, or is incidental or germane to the business.

(3) the cost price of each item or article of tangible personal property stored in this state for use or consumption in this state.

(4) the gross proceeds derived from the sale or charges for rooms, lodgings or accommodations furnished to transients as set out in subparagraph (3) (i), section 2 of this act.

(5) the gross sales of all services taxable under this act. No services are taxable under this act except those expressly enumerated and made taxable.

#### Section 4. Imposition of use tax.

There is levied and imposed, in addition to all other taxes and fees of every kind except the tax imposed under section 3 of this act, a tax upon the use or consumption of tangible personal property in this state, to be collected in the amount determined by applying the rate of two per cent (2%) to the cost price of each item or article of tangible personal property used or consumed in this state: Provided, that tangible personal property which has been acquired after the effective date of this act for use outside this state and subsequently becomes subject to the tax imposed hereunder shall be taxed on the basis of its cost price if such property is brought within this state for use within six (6) months of its acquisition; but if so brought within this state six (6) months or more after its acquisition, the property shall be taxed on the basis of the current market value (but not in excess of its cost price) of the property at the time of its first use within this state: Provided, further, that the tax shall be based on such proportion of the cost price or current market value as the duration of time of use within this state bears to the total useful life of the property (but it shall be presumed in all cases that the property will remain within this state for the remainder of its useful life unless convincing evidence is provided to the contrary).

#### Section 5. Exclusions and exemptions.

"Retail sale" or "sale at retail," do not include the sale of:

(1) tangible personal property which becomes an ingredient or component part, or is consumed or destroyed or loses its identity in the manufacture of tangible personal property for later sale but does include fuel and electricity;

(2) specific machinery and processing equipment and repair parts or replacements thereof, exclusively designed and made for and specifically used in the growing or manufacturing of a product or the rendering of a taxable service;

(3) materials, containers, labels, sacks, cans, boxes, drums or bags and other packing, packaging, or shipping materials for use in packing, packaging or shipping tangible personal property;

(4) tangible personal property delivered pursuant to bona fide written contracts entered into before the date of the enactment of this act, provided delivery is made within ninety (90) days after the effective date of this act; and building supplies, fixtures or equipment that enter into or become a part of a building or other kind of structure in this state, where plans, specifications, and the construction contract for a specific project has been entered into prior to the date of the enactment of this act, provided delivery is made within the time specified in such contract for the completion of such specific project;

(5) commercial feeds, seed, plants, fertilizer, liming materials, breeding and other livestock, semen, breeding fees, baby chicks, turkey poults, agricultural chemicals, fuel, containers for fruits and vegetables, or farm machinery, provided they are sold to and purchased by farmers for use in agricultural production for market;

(6) school lunches sold and served to pupils and employees of schools and subsidized by government, and school textbooks sold by a local school board or authorized agency thereof; and school textbooks sold by a college or other institution of learning, not conducted for profit, for use of students attending the institution of learning;

(7) tangible personal property not held or used by a seller in the course of an activity for which he is required to hold a certificate of registration, sometimes referred to as "casual sales";

(8) tangible personal property for future use by a person for taxable lease or rental as an established business or part of an established business, or incidental or germane to the business, including a simultaneous purchase and taxable leaseback;

(9) tangible personal property and taxable services for use or consumption by

the United States, the state of Montana or any political subdivision of this state; but this exclusion shall not apply to sales and leases to privately owned financial and other privately owned corporations chartered by the United States, the state of Montana, or political subdivisions of this state;

(10) delivery of tangible personal property outside this state for use or consumption outside this state.

(11) fuels used for the propulsion of vehicles on the public highways and which are included within the provisions of Article XII, section 1 b of the Constitution of Montana.

**Section 6. Credit for taxes paid in another state.** A credit shall be granted against the taxes imposed by this act with respect to a person's use in this state of tangible personal property purchased by him in another state. The amount of the credit shall be equal to the tax paid by him to another state or political subdivision thereof by reason of the imposition of a similar tax on his purchase or use of the property. The amount of the credit shall not exceed the tax imposed by this act.

**Section 7. Applicability or inapplicability of use tax in certain cases.** The use tax does not apply to tangible personal property owned or acquired in this state or imported into this state, or held or stored in this state, prior to the effective date of this act. The use tax does apply to all tangible personal property imported or caused to be imported into this state on or after the effective date of this act except as provided in this act, unless the property has previously been subject to a sales or use tax in another state or political subdivision equal or greater than the tax imposed by this act for which credit is given under section 6, or unless proof is furnished that the tangible personal property imported or caused to be imported into this state was owned or acquired prior to the effective date of this act, or otherwise is exempt under this act, but the use tax does not apply to the use of any article or tangible personal property brought into the state by a nonresident individual for his personal use while visiting within the state.

**Section 8. Moving residence or business into state; use tax.** The use tax does not apply to tangible personal property purchased outside this state for use outside this state by a then nonresident natural person or a business entity not actually doing business within this state who or which later brings the tangible personal property into this state in connection

with his establishment of a permanent residence or business in this state, provided that the property was purchased more than six (6) months prior to the date it was first brought into this state or prior to the establishment of the residence or business, whichever first occurs. This section does not apply to tangible personal property temporarily brought into this state for the performance of contracts for the construction, reconstruction, installation, repair, or for any other service with respect to real estate or fixtures thereon.

**Section 9. Diversion of tangible personal property to personal use.** The use tax applies to tangible personal property and taxable services of persons holding themselves out as sellers of goods and services when tangible personal property or taxable services are diverted to the personal use of the person, his family, or his employees.

**Section 10. Dealers.** The tax levied in section 3 and section 4 shall be collected from "dealers." For the purpose of this act, "dealer" means:

(1) any person physically located in this state who:

(i) manufactures or produces tangible personal property for sale at retail, for use, consumption, or distribution, or for storage to be used or consumed in this state;

(ii) imports or causes to be imported into this state tangible personal property from any state or foreign country, for sale at retail for use, consumption, or distribution, or for storage to be used or consumed in this state;

(iii) sells at retail, or offers for sale at retail, or has in possession for sale at retail, or for use, consumption, or distribution, or for storage to be used or consumed in this state, tangible personal property and taxable services as defined in this act;

(iv) has sold at retail, or used, consumed, or distributed, or stored for use or consumption in this state, tangible personal property or who has performed taxable services, and who cannot prove that the tax levied by this act has been paid on the sale at retail, the use, consumption, distribution, or storage of such tangible personal property or the charge for the rendition of taxable services;

(v) leases or rents tangible personal property, as defined in this act, for a consideration, permitting the use or possession of the property without transferring title thereto; and

(2) every other person who:



(i) maintains or has within this state, directly, or by an agent or a subsidiary, an office, distributing house, sales room, or house, warehouse, or other place of business;

(ii) solicits business in this state either by employees, independent contractors, agents or other representatives, and by reason thereof makes sales to persons within this state of tangible personal property, the use of which is taxed by this act; and any other person making sales to persons within this state of tangible personal property, the use of which is taxed by this act, who may be authorized by the state board of equalization to collect such tax;

(iii) as a representative, agent, or solicitor, for an out-of-state principal, solicits, receives and accepts orders from persons in this state for future delivery and whose principal refuses to register under this act;

(iv) shall become liable to and shall owe this state any amount of tax imposed by this act, whether or not he holds, or is required to hold, a certificate of registration under this act.

**Section 11. Contractors.** (a) Any person who contracts orally, in writing, or by purchase order, to perform construction, reconstruction, installation, repair, or any other service with respect to real estate or fixtures thereon and in connection therewith to furnish tangible personal property or taxable services, shall be deemed to have purchased the tangible personal property for use or consumption. Any sale, distribution, or lease to or storage for such person shall be deemed a sale, distribution, or lease to or storage for the ultimate consumer and not for resale, and the dealer making the sale, distribution, or lease to or storage for the person shall collect the tax to the extent required by this act.

(b) Any person who contracts to perform services in this state and is furnished tangible personal property for use under the contract by the person, or his agent or representative, for whom the contract is performed, and if a sale or use tax has not been paid to this state by the person supplying the tangible personal property, shall be deemed to be the consumer of the tangible personal property so used, and shall pay a use tax based on the fair market value of the tangible personal property so used, irrespective of whether or not any right, title or interest in the tangible personal property becomes vested in the contractor; but this subsection does not apply to the sale of tangible personal property which becomes an ingredient or com-

ponent part of, or is consumed or destroyed or loses its identity in the manufacture of tangible personal property for later sale or governmental exclusion set out in section 5 of this act.

(c) Any person who contracts orally, in writing, or by purchase order to perform any service in the nature of equipment rental, and the principal part of that service is the furnishing of equipment or machinery which will not be under the exclusive control of the contractor, shall be liable for the sale or use tax on the gross proceeds from such contract to the same extent as the lessor of tangible personal property.

(d) Tangible personal property incorporated in real property construction which loses its identity as tangible personal property shall be deemed to be tangible personal property used or consumed within the meaning of this section.

(e) Nothing in this section shall be construed to affect or limit the resale exclusion provided for in this act, nor shall anything contained herein be construed to impose any sales or use tax with respect to the use in the performance of contracts with the United States or this state and its political subdivisions, of tangible personal property owned by a governmental body which actually is not used or consumed in the performance thereof.

## **Section 12. Certificates of registration.**

(a) Every person desiring to engage in or conduct business as a dealer in this state shall file with the state board of equalization an application for a certificate of registration for each place of business in this state.

(b) Every application for a certificate of registration shall be made upon a form prescribed by the state board of equalization and shall set forth the name under which the applicant transacts or intends to transact business, the location of his place or places of business, and such other information as the state board of equalization requires. The application shall be signed by the owner if a natural person; in the case of an association or partnership, by a member or partner; in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the application.

(c) When the required application has been made the state board of equalization shall issue to each applicant a separate certificate of registration for each place of business within this state. A certificate of registration is not assignable and is valid only for the person in whose name it is issued and for the transaction



of business at the place designated therein. It shall be at all times conspicuously displayed at the place for which issued.

(d) Whenever any person fails to comply with any provision of this act or any rule or regulation of the state board of equalization relating thereto, the state board of equalization, upon hearing after giving such person ten (10) days notice in writing, specifying the time and place of hearing and requiring him to show cause why his certificate of registration should not be revoked or suspended, may revoke or suspend any one or more of the certificates of registration held by such person. The notice may be personally served or served by certified mail directed to the last known address of the person. A dealer whose certificate of registration has been previously suspended or revoked shall pay the state board of equalization a fee of twenty dollars (\$20) for the renewal or reissuance of a certificate of registration.

(e) Any person who engages in business as a dealer in this state without obtaining a certificate of registration or after a certificate of registration has been suspended or revoked, and each officer of any corporation which so engages in business is guilty of a misdemeanor; each day's continuance in business in violation of this section is a separate offense.

(f) If the holder of a certificate of registration ceases to conduct his business at the place specified in his certificate, the certificate expires; and the holder shall inform the state board of equalization in writing within thirty (30) days after he has ceased to conduct the business at that place; but, if the holder of a certificate of registration desires to change his place of business to another place in this state, he shall so inform the state board of equalization in writing, and his certificate shall be revised accordingly.

(g) This section also applies to any person who engages in the business of furnishing any of the things or services taxable under this act. Also, it applies to any person who is liable only for the collection of the use tax, but that person may be issued a certificate of registration in relevant form.

### Section 13. Exemption certificates. (a)

All sales or leases are subject to the tax until the contrary is established. The burden of proving that a sale, distribution, lease, or storage of tangible personal property is not taxable is upon the person who makes the sale, distribution, lease, or storage, unless he takes from the purchaser or lessee a certificate to the

effect that the property is exempt under this act.

(b) The certificate mentioned in this section relieves the person who takes the certificate from any liability for the payment or collection of the tax, except upon notice from the state board of equalization that the certificate is no longer acceptable. The certificate shall be signed by and bear the name and address of the purchaser or lessee, indicate the number of the certificate of registration (if any) issued to the purchaser, or lessee, indicate the general character of the taxable service rendered or tangible personal property sold, distributed, leased, or stored (or to be sold, distributed, leased, or stored under a blanket exemption certificate) and be substantially in such form as the state board of equalization prescribes.

(c) If a purchaser or lessee who gives a certificate under this section makes any use of the property other than an exempt use or retention, demonstration, or display while holding property for resale, distribution, or lease in the regular course of business, the use shall be deemed a taxable sale by the purchaser or lessee as of the time the property or service is first used by him, and the cost of the property to him shall be deemed the sales price of the retail sale. If the sole use of the property other than retention, demonstration, or display in the regular course of business is the rental of the property while holding it for sale, distribution, or lease, the purchaser shall pay the tax on the cost of the property to him and when the property is sold shall collect and pay the tax on the difference between the cost of the property to him and the retail sales price.

(d) If a purchaser gives a certificate under this section with respect to the purchase of fungible goods and thereafter commingles these goods with other fungible goods not so purchased, but of such similarity that the identity of the constituent goods in the commingled mass cannot be determined, sales or distribution from the mass of commingled goods shall be deemed to be sales or distributions of the goods so purchased until a quantity of commingled goods equal to the quantity of purchased goods so commingled has been sold or distributed.

**Section 14. Collection.** The tax levied by this act shall be paid by the dealer, but the dealer shall separately state the amount of the tax and add the tax to the sales price or charge; and thereafter, the tax shall be a debt from the purchaser, consumer, or lessee to the dealer until

paid and shall be recoverable at law in the same manner as other debts, but no action at law or suit in equity under this act may be maintained in this state by any dealer who is not registered under this act, or is delinquent in the payment of the taxes imposed under this act.

To eliminate separate statement of the amount of tax in fractions of one cent (1¢), dealers shall add to the sales price or charge and collect from the purchaser, consumer, or lessee such amounts as may be prescribed by the state board of equalization to carry out the purposes of this section.

Notwithstanding any exemption from taxes which any dealer enjoys under the Constitution or laws of this or any other state, or of the United States, the dealer shall collect the tax from the purchaser, consumer, or lessee and shall pay it over to the state board of equalization as herein provided.

Any dealer who neglects, fails, or refuses to collect the tax upon each and every taxable sale, distribution, lease or storage of tangible personal property made by him, his agents, or employees shall be liable for and pay the tax himself, and the dealer shall not thereafter be entitled to sue for or recover in this state any part of the purchase price or rental from the purchaser until the tax is paid. Also, any dealer who neglects, fails or refuses to pay or collect the tax herein provided, either by himself or through his agents or employees, is guilty of a misdemeanor.

**Section 15. Absorption of tax prohibited.** No person shall advertise or hold out to the public, in any manner, directly or indirectly, that he will absorb all or any part of the sales or use tax, or that he will relieve the purchaser, consumer, or lessee of the payment of all or any part of the tax, except as authorized under section 31. Any person who violates this section is guilty of a misdemeanor.

**Section 16. Returns by dealers.** Every dealer required to collect or pay the sales or use tax, on or before the twenty-eighth day of the month following the month in which the tax shall become effective, shall transmit to the state board of equalization, upon a form prescribed, prepared and furnished by the state board of equalization, a return showing the gross sales, gross proceeds, or cost price, as the case may be, arising from all transactions taxable under this act during the preceding calendar month; and thereafter a like return shall be prepared and transmitted to the state board of

equalization by every dealer on or before the twenty-eighth day of each month, for the preceding calendar month. The return also shall contain a statement showing the amount in each class of exclusions and exemptions which are not subject to the tax imposed by this act, or if the form so provides, the total amount thereof without specifying each class. In the case of dealers regularly keeping books and accounts on the basis of an annual period which varies fifty-two (52) to fifty-three (53) weeks, the state board of equalization may make rules and regulations for reporting consistent with the accounting period. When the tax for which any dealer is liable under this act does not exceed five dollars (\$5) in any month, or sixty dollars (\$60) in any annual reporting period, the state board of equalization may permit a dealer upon written application to file an annual return and pay the amount of tax due on the last day of the month following the end of the annual period. When the tax for which any dealer is liable under this act does not exceed ten dollars (\$10) in any month, or sixty dollars (\$60) in any annual reporting period, the state board of equalization may permit a dealer upon written application to file a quarterly return and pay the amount of tax due on the last day of the month following end of the quarterly period.

**Section 17. Payment to accompany dealer's return.** At the time of transmitting to the state board of equalization the return required under section 16, the dealer shall remit to the state board of equalization therewith the amount of tax due under the applicable provisions of this act after making appropriate adjustments for purchases returned, reposessions, and accounts uncollectible and charged off as provided in sections 18, 19, and 20. The tax imposed by this act for each month becomes delinquent on the day following the twenty-eighth day of the succeeding month if not theretofore paid.

**Section 18. Returned goods.** If purchases are returned to the dealer by the purchaser or consumer after the tax imposed by this act has been collected or charged to the account of the purchaser, the dealer is entitled to reimbursement of the amount of tax collected or charged by him, in the manner prescribed by the state board of equalization, but the amount of tax so reimbursed to the dealer shall not include the tax paid upon any cash retained by the dealer after the return of merchandise; and if the tax has not been remitted by the dealer, the dealer may deduct it in sub-



mitting his return. The dealer shall be issued a refund by the state board of equalization equal to the net amount remitted by the dealer for the tax collected if the dealer can establish that the tax was not due.

**Section 19. Repossessions.** A dealer who has paid the tax on tangible personal property sold under a retained title, conditional sale, or similar contract, may take credit for the tax paid by him upon the unpaid balance due him when he repossesses the property, the credit to be administered by the state board of equalization in the same manner as provided for returned purchases under section 18. When repossessed property is resold, the sale is subject in all respects to this act.

**Section 20. Bad debts.** In any return filed under the provisions of this act, the dealer, under rules and regulations prescribed by the state board of equalization, may credit against the tax shown to be due on the return the amount of sales or use tax previously returned and paid on accounts which during the period covered by the current return have been found to be worthless and actually charged off for income tax purposes; except that if any accounts so charged off are thereafter in whole or in part paid to the dealer, the amount paid shall be included in the first return filed after the collection and the tax paid accordingly.

**Section 21. Extensions.** The state board of equalization may grant an extension upon written application therefor to the end of the calendar month in which any tax return is due hereunder or for a period not exceeding thirty (30) days, and no interest or penalty shall be charged, assessed or collected by reason of the granting of the extension, except that when an extension is granted beyond the end of the calendar month in which any tax return is due, interest on the tax at the rate of one-half ( $\frac{1}{2}$ ) of one per cent (1%) per month, or fraction thereof, shall be charged.

**Section 22. Civil penalties.** When any dealer fails to make any return and pay the full amount of the tax required by this act, there shall be imposed, in addition to other penalties provided herein, a specific penalty to be added to the tax in the amount of twenty-five dollars (\$25) and ten per cent (10%) of the tax due if the failure is for not more than thirty (30) days, with an additional five per cent (5%) for each additional thirty (30) days, or fraction thereof, during which the failure continues, not to exceed twenty-five per cent (25%) in the

aggregate; but, if the failure is due to providential cause shown to the satisfaction of the state board of equalization, the return with remittance may be accepted exclusive of penalties. In the case of a false or fraudulent return, where willful intent exists to defraud the state of any tax due under this act, a specific penalty of fifty per cent (50%) of the amount of the proper tax shall be assessed. All penalties and interest imposed by this act shall be payable by the dealer and collectible by the state board of equalization as if they were a part of the tax imposed.

**Section 23. Assessment based on estimate.** (a) If any dealer fails to make a return as provided by this act, or makes a grossly incorrect return, or a return that is false or fraudulent, the state board of equalization shall make an estimate for the taxable period of the retail sales or distributions of the dealer, or of the gross proceeds from leases of tangible personal property, or taxable services by the dealer, or the cost price of all articles of tangible personal property imported by the dealer for use or consumption in the state or storage by the dealer of tangible personal property to be used or consumed in the state, and assess the tax, plus penalties. The state board of equalization shall give the dealer ten (10) days notice in writing requiring the dealer to appear before him or an assistant with such books, records, and papers as he requires relating to the business of the dealer for the taxable period; and the state board of equalization may require the dealer or the agents and employees of the dealer to give testimony or to answer interrogatories under oath administered by the state board of equalization respecting the sale, distribution, lease, use, consumption, or storage of tangible personal property, or taxable services or the failure to make a return thereof as provided in this act. If any dealer fails to make any return or refuses to permit an examination of his books, records, or papers, or to appear and answer questions within the scope of an investigation relating to the sale, distribution, lease, use, consumption, or storage of tangible personal property, or taxable services, the state board of equalization may make the assessment based upon information available to it and issue a warrant for the collection of the taxes and penalties found to be due. The assessment shall be deemed prima facie correct.

(b) If the dealer has imported the tangible personal property and fails to produce an invoice showing the sales price of the articles, or the invoice does



not reflect the true or actual sales price as defined in this act, the state board of equalization shall ascertain, in any manner feasible, the true sales price and assess and collect the tax, with penalties, to the extent they have accrued, on the true sales price as ascertained by it. The assessment shall be deemed *prima facie* correct.

(c) In the case of the lease of tangible personal property, if the consideration given or reported by the dealer, in the judgment of the state board of equalization, does not represent the true or actual consideration, the state board of equalization may fix it and assess and collect the tax thereon as above provided, with penalties as have accrued. The assessment shall be deemed *prima facie* correct.

**Section 24. Records.** (a) Every dealer required to make a return and pay or collect any tax under this act shall keep and preserve suitable records of the sales, leases, or purchases, as the case may be, taxable under this act, and other books of account as necessary to determine the amount of tax due hereunder, and other pertinent information as required by the state board of equalization; and every dealer shall keep and preserve for a period of four (4) years all invoices and other records of goods, wares, and merchandise, or other subjects of taxation under this act, and all the books, invoices, and other records shall be open to examination at all reasonable hours by the state board of equalization or any of its duly authorized agents.

(b) In order to aid in the administration and enforcement of the provisions of this act, all wholesalers and jobbers in this state shall keep a record of all sales of tangible personal property, whether the sales be for cash or on terms of credit. The records required to be kept by all wholesalers and jobbers shall include the name and address of the purchaser, the number of the certificate of registration issued to the purchaser, the date of the purchase, the article purchased, and the price at which the article is sold to the purchaser. These records shall be kept for a period of four (4) years and shall be open to the inspection of the state board of equalization (or its authorized agents) at all reasonable hours during the day. The failure of any wholesaler or jobber in this state to keep the records, or the failure of any wholesaler or jobber in this state to permit an inspection of the records by the state board of equalization as aforesaid, is a misdemeanor. Moreover, if any person

who is both a retailer and a wholesaler or jobber fails to keep proper records showing wholesale sales and retail sales separately, he shall pay the tax as a retailer on both classes of his business.

(c) For the purpose of enforcing the collection of the tax levied by this act, the state board of equalization through its authorized agents may examine at all reasonable hours during the day the books, records, and other documents of all transportation companies, agencies, firms, or persons that conduct their business by truck, rail, water, airplane, or otherwise, in order to determine what dealers are importing or otherwise are shipping articles of tangible personal property which are liable for the tax. If the transportation company, agency, firm or person refuses to permit an examination of its or his books, records, and other documents by the state board of equalization, it or he shall be deemed guilty of a misdemeanor. Moreover, the state board of equalization may proceed by petitioning any court of record for an order citing the transportation company, agency, firm, or person to show cause before said court of record why the books, records, and other documents should not be examined pursuant to the injunction of the court, and why a bond should not be required with proper security in the penalty of not more than two thousand dollars (\$2,000) conditioned upon compliance with the provisions hereof for a period of not more than one (1) year.

**Section 25. Sale of business.** If any dealer liable for any tax, penalty, or interest levied hereunder sells out his business or stock of goods or quits the business, he shall make a final return and payment within fifteen (15) days after the date of selling or quitting the business. The return shall include any sales made at retail during liquidation. His successors or assigns, if any, shall withhold sufficient of the purchase money to cover the amount of taxes, penalties, and interest due and unpaid until the former owner produces a receipt from the state board of equalization showing that they have been paid or a certificate stating that no taxes, penalties, or interest are due. If the purchaser of a business or stock of goods fails to withhold the purchase money as above provided, he shall be personally liable for the payment of the taxes, penalties and interest due and unpaid on account of the operation of the business by any former owner. Nothing herein shall be deemed to qualify or limit the exemption as to such a sale as is covered by section 5.

**Section 26. Bond.** The state board of equalization, if necessary and advisable in order to secure the collection of the tax levied by this act, may require any person subject to the tax to file with it a bond of a surety company authorized to do business in this state as surety, in such reasonable amount as the state board of equalization fixes, to secure the payment of any tax, penalty or interest due or which may become due from the person. In lieu of a bond, securities approved by the state board of equalization may be deposited with the state treasurer which securities shall be kept in the custody of the state treasurer, and shall be sold by him, at the request of the state board of equalization, at public or private sale, without notice to the depositor thereof, if necessary in order to recover any tax, penalty or interest due the state under this act. Upon the sale, the surplus, if any, above the amounts due under this act, shall be returned to the person who deposited the securities.

**Section 27. Jeopardy assessment.** If the state board of equalization deems that the collection of any tax or any amount of tax, required to be collected and paid under this act, may be jeopardized by delay, it shall make an assessment of the tax or amount of tax required to be collected and shall mail or issue a notice of the assessment to the taxpayer together with a demand for immediate payment of the tax or of the deficiency in tax declared to be in jeopardy including penalties. In the case of a tax for a current period, the state board of equalization may declare the taxable period of the taxpayer immediately terminated and shall cause notice of the finding and declaration to be mailed or issued to the taxpayer together with a demand for immediate payment of the tax based on the period declared terminated and the tax shall be immediately due and payable, whether or not the time otherwise allowed by law for filing a return and paying the tax has expired. Assessments provided for in this section shall become immediately due and payable, and if any tax, penalty or interest is not paid upon demand of the state board of equalization, it shall proceed to collect it by legal process, or, in its discretion, it may require the taxpayer to file a bond sufficient to protect the interest of the state.

**Section 28. Direct payment permits.** (a) Notwithstanding any other provisions of this act, the state board of equalization may authorize (1) a manufacturer, mine operator, or public service corporation that is a user, consumer, distributor, or lessee to which sales, distri-

butions, leases, or storage of tangible personal property are made under circumstances which normally make it impossible at the time thereof to determine the manner in which the property will be used by the person, or (2) any person who stores tangible personal property in this state for use both within and outside this state, to pay any tax levied by this act directly to this state and waive the collection of the tax by the dealer; but no such authority shall be granted or exercised except upon application to the state board of equalization and the issuance by the state board of equalization of a direct payment permit. If a direct payment permit is granted, payment of the tax on all sales, distributions, and leases, including sales, distributions, leases, and storage of tangible personal property and sales of taxable services for use known at the time thereof shall be made directly to the state board of equalization by the permit holder.

(b) On or before the twenty-eighth day of each month every permit holder shall make and file with the state board of equalization a return for the preceding month in the form prescribed by the state board of equalization showing the total value of the tangible personal property used, the amount of tax due from the permit holder (which amount shall be paid to the state board of equalization with such return) and such other information as the state board of equalization deems necessary. The state board of equalization, upon written request by the permit holder, may grant a reasonable extension of time for making and filing returns and paying the tax. Interest on the tax at the rate of one-half ( $\frac{1}{2}$ ) of one per cent (1%) per month, or fraction thereof, shall be charged on every extended payment.

(c) It is the duty of every permit holder required to make a return and pay tax under this section to keep and preserve suitable records of purchases, together with invoices of purchases, bills of lading, and other pertinent records and documents in the form the state board of equalization requires by regulation. All records and other documents shall be open during business hours to the state board of equalization or its duly authorized agents and shall be preserved for a period of four (4) years, unless the state board of equalization, in writing, authorizes their destruction or disposal at an earlier date.

(d) A permit granted pursuant to this section shall continue to be valid until surrendered by the holder or canceled for cause by the state board of equalization.



(e) Persons who hold a direct payment permit which has not been canceled shall not be required to pay the tax to the dealer as otherwise herein provided. Such persons shall notify each dealer from whom purchases or leases of tangible personal property are made of their direct payment permit number and that the tax is being paid directly to the state board of equalization. Upon receipt of the notice, the dealer shall be absolved from all duties and liabilities imposed by this act for the collection and remittance of the tax with respect to sales, distributions, leases, or storage of tangible personal property to the permit holder. Dealers who make sales upon which the tax is not collected by reason of the provisions of this section shall maintain records in such manner that the amount involved and identity of each purchaser may be ascertained.

(f) Upon the cancellation or surrender of a direct payment permit, the provisions of this act, shall thereafter apply to the person who previously held the permit, and the person shall promptly notify in writing dealers from whom purchases, leases, and storage of tangible personal property are made of the cancellations or surrender. Upon receipt of the notice, the dealer shall be subject to the provisions of this act, with respect to all sales, distributions, leases, or storage of tangible personal property thereafter made to the person.

#### **Section 29. Vending machine sales.**

Whenever a dealer makes sales of tangible personal property through vending machines, or in any other manner making collection of the tax impractical, the state board of equalization may authorize the dealer to prepay the tax and waive collection from the purchaser and may require the dealer to furnish bond sufficient to secure prepayment of the tax. The dealer shall be required to print upon the property sold or post on the vending machine a statement to the effect that the tax has been paid in advance. The terms and conditions of this section are inapplicable unless the dealer makes application to the state board of equalization for the authority herein contained, and unless the state board of equalization finds that the collection of the tax in the manner otherwise provided in this act is impractical.

**Section 30. Tax warrants.** The state board of equalization, when any tax becomes delinquent under this act, may issue a warrant for the collection of the tax, penalty, and interest from each delinquent taxpayer.

#### **Section 31. Erroneous assessments.**

Upon any claim of an erroneous or illegal assessment or collection, the taxpayer shall have his remedy under section 84-4923.1, R. C. M. 1947. The section cited is applicable to all sales and use taxes imposed under this act.

**Section 32. Period of limitations.** The taxes imposed by this act shall be assessed within three (3) years from December 31 of the year in which the taxes became due and payable; but in the case of a false or fraudulent return with intent to evade payment of the taxes imposed by this act, or a failure to file a return, the taxes may be assessed, or a proceeding in court for the collection of such taxes may be begun without assessment at any time within six (6) years from December 31 of the year in which the taxes became due and payable.

**Section 33. Violation of act by dealer a misdemeanor.** Any dealer subject to the provisions of this act who fails or refuses to furnish any return herein required to be made, or fails or refuses to furnish a supplemental return or other data required by the state board of equalization, or who makes a false or fraudulent return with intent to evade the tax hereby levied, or who makes a false or fraudulent claim for refund, or who gives or knowingly receives a false or fraudulent exemption certificate, or who violates any other provision of this act, punishment for which is not otherwise herein provided, is guilty of a misdemeanor.

**Section 34. Administration.** The state board of equalization shall administer and enforce the assessment and collection of the taxes and penalties imposed by this act. It shall design, prepare, print, and furnish to all dealers, or make available to them, all necessary forms for filing returns together with instructions to assure a full collection from dealers and an accounting for the taxes due, but failure of any dealer to receive or procure forms or instructions, or both, shall not relieve him from the payment of the tax at the time and in the manner herein provided.

**Section 35. Rules and regulations.** The state board of equalization may make and publish reasonable rules and regulations not inconsistent with this act, other applicable laws, or the Constitution of this state, or of the United States, for the enforcement of the provisions of this act and the collection of the revenue hereunder.



**Section 36. Administration of oaths.**

The state board of equalization and such other officers or employees of the department of taxation as the state board of equalization authorizes in writing, may administer oaths for the purpose of enforcing and administering the provisions of this act.

**Section 37. Secrecy of information.**

Except in accordance with proper judicial order, or as provided by law, it is unlawful for the state board of equalization (or any agent), auditor, or other officer or employee to divulge or make known in any manner the amount of sales, the amount of tax paid, or any other particulars set forth or disclosed in any return required by this act. Nothing in this act shall be construed to prohibit the publication of statistics so classified as to prevent the identity of particular reports or returns and the items thereof, or the inspection by the legal representative of this state of the report or return of any taxpayer who applies for a review or appeal from any determination or against whom an action or proceeding is about to be instituted or has been instituted to recover any tax or penalty imposed by this act.

**Section 38. Exchange of information with other tax officials.**

The state board of equalization may furnish to the tax officials of any other state and its political subdivision, the political subdivisions of this state, the District of Columbia, and the United States and its territories, any information contained in tax returns and reports and related schedules and documents filed pursuant to the tax laws of this state, or in the report of an audit or investigation made with respect thereto: Provided, that said jurisdictions grant similar privileges to this state and that the information is to be used only for tax purposes.

**Section 39. Sales tax fund—creation—sales tax refund fund—appropriations.**

(a) There is hereby created in the office of the state treasurer and subject to his control and custody a fund to be known and designated as the "Sales and Use Tax Fund."

(b) All moneys collected under this act shall be paid by the state board of equalization into the sales and use tax fund.

(c) A portion of the amount deposited in the "Sales and Use Tax Fund" not exceeding two hundred thousand dollars (\$200,000) to June 30, 1972 and not exceeding seven hundred fifty thousand dollars (\$750,000) in any fiscal year thereafter shall be retained and is here-

by appropriated as a "Sales and Use Tax Administration and Enforcement Fund" for the purposes of administration and enforcement of this act; there shall be retained in the "Sales and Use Tax Fund" such amounts as are necessary for the purpose of repaying overpayments made under this act, for the purpose of paying any other erroneous receipts illegally assessed, collected, or which are excessive in amount, and for the payment of the income tax credits or refunds otherwise provided in this act and there is hereby appropriated from this fund so much as may be necessary for the payment of said refunds and credits.

The balance shall be paid into the general fund of the state of Montana.

**Section 40. Increased income surtax.**

Section 84-4902.1, R. C. M. 1947, is amended to read as follows: [See section 84-4902.1 above].

**Section 41. Refund or credit for sales and use tax upon food, drugs and other related items.**

The state board of equalization shall allow a refund or credit to persons who file individual income tax returns under the Montana Income Tax Act (sections 84-4901 et seq. R. C. M. 1947) for taxable years beginning on and after January 1, 1972 and who have continuously resided in this state for the twelve (12) months ending on the last day of their taxable year. The refund shall be made for each exemption, including that for blindness or age sixty-five (65) years or over, for which a deduction is claimed on the taxpayer's Montana income tax return except that no refund or credit may be claimed for an exemption which represents a person filing a Montana income tax return claiming a deduction for his own personal exemption. In no event shall more than one (1) taxpayer be allowed refund or credit for the same exemption. The refund or credit shall be computed by multiplying ten dollars (\$10) times each exemption for which a deduction is allowable. The refund or credit shall be allowed each person who files an individual income tax return and shall be paid out of moneys collected under the sales and use tax hereinabove provided for, and as follows:

(1) if no income tax is due the state, the refund shall be paid to the person filing the return;

(2) if income tax due is less than the computed amount, the difference between the income tax due and the computed amount shall be paid to the person filing the return;

(3) if income tax due is greater than the computed amount, the computed amount shall be allowed as a credit.

**Section 42. Referendum.** There shall be a referendum upon this act except for sections 40 and 46 to be submitted to the electors of this state at a special general election to be held November 2, 1971 for their approval or rejection.

**Section 43.** The referendum shall be submitted to the electors on an official ballot which shall contain the title of this act and the number of the referendum. The question shall be presented in the following form:

- ☐ For referendum measure no. ———  
For reduction of the 40% Income Tax Surtax to 10% and for the enactment of the 2% Sales and Use tax.
- ☐ Against referendum measure no. ———  
Against reduction of the 40% Income Tax Surtax to 10% and against enactment of the 2% Sales and Use Tax.

**Section 44. Reduced Income Surtax.** If the majority of the electors vote in the affirmative on the referendum provided for in sections 42 and 43, section 84-4902.1, R. C. M. 1947, shall be amended to read as follows: [See note following section 84-4902.1 above].

**Section 45. Repealer.** All acts or parts of acts in conflict herewith are hereby repealed.

**Section 46. Effective date.**

- (a) Section 40 of this act shall be effective upon passage and approval.
- (b) If approved by a majority of the voters voting for and against the referendum herein provided the sales and use tax shall be imposed upon all taxable transactions occurring on and after January 1, 1972.

## TITLE 93—CIVIL PROCEDURE

### Chapter

3. District courts, 93-303.

99. Eminent domain, 93-9927 to 93-9944.

### CHAPTER 3—DISTRICT COURTS

#### Section

93-303. Salaries of district judges.

**93-303. (8814) Salaries of district judges.** The annual salary of each district judge shall be twenty thousand five hundred dollars (\$20,500), beginning July 1, 1971.

**History:** En. Sec. 1, Ch. 176, L. 1919; re-en. Sec. 8814, R. C. M. 1921; amd. Sec. 1, Ch. 114, L. 1947; amd. Sec. 1, Ch. 84, L. 1951; amd. Sec. 1, Ch. 247, L. 1955; amd. Sec. 1, Ch. 198, L. 1959; amd. Sec. 1, Ch. 187, L. 1961; amd. Sec. 2, Ch. 212, L. 1963; amd. Sec. 2, Ch. 308, L. 1967; amd. Sec. 1, Ch. 322, L. 1969; amd. Sec. 1, Ch. 4, 2nd Ex. L. 1971.

### CHAPTER 99—EMINENT DOMAIN

#### Section

- 93-9927. Relocation assistance—purpose of act.  
93-9928. Definition of terms in relocation assistance law.  
93-9929. Payments to displaced persons—moving expense allowance—business losses.  
93-9930. Additional payments for displacement from dwelling owned by occupant.  
93-9931. Additional payments for displacement from rented dwelling.  
93-9932. Relocation advisory services.  
93-9933. Assurance of availability of suitable replacement dwellings.  
93-9934. Relocation costs included in project costs—replacement housing.  
93-9935. Public assistance eligibility unimpaired—tax exemption of payments.  
93-9936. Appeal to district court from administrative determination.  
93-9937. Appraisal and negotiation policies—time allowed to move—condemnation proceedings.  
93-9938. Advancement of closing costs and taxes incurred by owner.  
93-9939. Reimbursement of costs when condemnation proceedings abandoned.  
93-9940. Expenses included in inverse condemnation judgment or settlement.  
93-9941. Acquisition of buildings and improvements affected—payments to tenant.  
93-9942. Duplication of eminent domain payments not intended.  
93-9943. New rights and powers not created.  
93-9944. Application to all federally assisted programs.

**93-9927. Relocation assistance—purpose of act.** It is the purpose of this act to provide for uniform and equitable treatment of persons displaced from their homes, businesses, or farms as a result of federally assisted programs, to establish uniform and equitable land acquisition policies for federally assisted programs and to comply with the federal "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970."

**History:** En. Sec. 1, Ch. 3, 2nd Ex. L. 1971.

#### Title of Act

An act to provide for relocation as-

sistance to persons displaced as a result of acquisition of land for federally assisted programs and to provide for acquisition practices.



**93-9928. Definition of terms in relocation assistance law.** As used in this act, unless the context otherwise requires:

(1) "Agency" means the state of Montana, a political subdivision of the state or any department, agency or instrumentality of the state of Montana or of a political subdivision of the state.

(2) "Average annual net earnings" means one-half ( $\frac{1}{2}$ ) of any net earnings of a business or farm operation, before federal and state income taxes, during the two taxable years immediately preceding the taxable year in which such business or farm operation moves from real property acquired for a project of an agency (for which federal financial assistance is available to pay all or any part of the cost) or during such other period as the acquiring agency determines to be more equitable for establishing such earnings, and includes any compensation paid by the business or farm operation to the owner, his spouse, or his dependents during such period.

(3) "Business" means any lawful activity, excepting a farm operation, conducted primarily:

(a) for the purchase, sale, lease and rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property;

(b) for the sale of services to the public;

(c) by a nonprofit organization; or

(d) solely for the purposes of section 3 [93-9929] (1) of this act, for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted.

(4) "Displaced person" means any person who, on or after the effective date of this act, moves from real property, or moves his personal property from real property, as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of an acquiring agency to vacate real property, for a program or project undertaken by the agency, for which federal financial assistance will be available to pay all or any part of the cost; and solely for the purposes of section 3 [93-9929] (1) and (2) and section 6 [93-9932] of this act, as a result of the acquisition of, or as the result of the written order of, the acquiring agency to vacate other real property, on which such person conducts a business or farm operation, for such program or project. The term "displaced person" also includes a person who moves or discontinues his business or moves other personal property, or moves from his dwelling as the direct result of code enforcement activities, or a program of rehabilitation of buildings conducted pursuant to a federal program.

(5) "Federal act" means the "Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970" or as that act may be amended.

(6) "Federal financial assistance" means a grant, loan, or contribution provided by the United States except any federal guarantee or insurance.

(7) "Farm operation" means any activity conducted solely or primarily for the production of one (1) or more agricultural products or commodities, including timber, for sale or home use, and customarily produced in such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(8) "Person" means any individual, partnership, corporation or association.

History: En. Sec. 2, Ch. 3, 2nd Ex.  
L. 1971.

**93-9929. Payments to displaced persons—moving expense allowance—business losses.** (1) Whenever the acquisition of real property for a program or project of an agency (for which federal financial assistance is available to pay all or any part of the cost) will result in the displacement of any person, the agency shall make payment to the displaced person, upon application as approved by the agency, for:

(a) actual reasonable expenses in moving himself, his family, business, farm operation, or other personal property;

(b) actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the agency; and

(c) actual reasonable expenses in searching for a replacement business or farm.

(2) In lieu of payments for actual expenses and losses under subsection (1) of this section a person who is displaced from a dwelling may elect to receive a moving expense allowance determined according to a schedule established by the agency and a dislocation allowance, neither of which may exceed the maximum allowances under section 202 (b) of the federal act.

(3) In lieu of payments for actual expenses and losses under subsection (1) of this section a person who is displaced from his place of business or from his farm operation may receive a fixed payment in an amount equal to the average annual net earnings of the business or farm operation provided that:

(a) the payment shall not be less nor more than the amounts set forth in section 202 (c) of the federal act;

(b) in the case of a business no payment shall be made under this subsection unless the acquiring agency is satisfied that the business cannot be relocated without a substantial loss of its existing patronage and is not a part of a commercial enterprise having at least one (1) other establishment not being acquired by an agency, which is engaged in the same or similar business.

History: En. Sec. 3, Ch. 3, 2nd Ex.  
L. 1971.

**93-9930. Additional payments for displacement from dwelling owned by occupant.** (1) In addition to payments otherwise authorized by this

act, the acquiring agency shall make an additional payment to any displaced person who is displaced from a dwelling actually owned and occupied by such displaced person for not less than one hundred and eighty (180) days prior to the initiation of negotiations for the acquisition of the property. The additional payment shall include the following elements:

(a) the amount may not exceed the amount allowed under section 203 of the federal act,

(b) the amount, if any, which when added to the acquisition cost of the dwelling acquired by the agency, equals the reasonable cost of a comparable replacement dwelling which is a decent, safe, and sanitary dwelling adequate to accommodate such displaced person, reasonably accessible to public services and places of employment and available on the private market. All determinations required to carry out this subsection (b) shall be made in accordance with regulations issued by the acquiring agency.

(c) the amount, if any, which will compensate the displaced person for any increased interest costs which the person is required to pay for financing the acquisition of any comparable replacement dwelling. The amount shall be paid only if the dwelling acquired by the agency was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than one hundred and eighty (180) days prior to the initiation of negotiations for the acquisition of the dwelling. The amount shall be equal to the excess in the aggregate interest and other debt service costs of that amount of the principal of the mortgage on the replacement dwelling which is equal to the unpaid balance of the mortgage on the acquired dwelling, over the remainder term of the mortgage on the acquired dwelling, reduced to discounted present value. The discount rate shall be the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the replacement dwelling is located.

(d) reasonable expenses incurred by the displaced person for evidence of title, recording fees, and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses.

(2) The additional payment authorized by this section shall be made only to a displaced person who purchases and occupies a replacement dwelling which is decent, safe, and sanitary not later than the end of the one (1) year period beginning on the date on which he received from the agency final payment of all costs of the acquired dwelling, or on the date on which he moves from the acquired dwelling, whichever is the later date.

**History: En. Sec. 4, Ch. 3, 2nd Ex.  
L. 1971.**

**93-9931. Additional payments for displacement from rented dwelling.** In addition to amounts otherwise authorized by this act the acquiring agency shall make a payment to or for any displaced person displaced from any dwelling not eligible to receive a payment under section 4 [93-9930] of this act if the dwelling was actually and lawfully occupied by the displaced person for not less than ninety (90) days prior to the initia-



tion of negotiations for acquisition of such dwelling. The payment shall be either:

(1) the amount necessary to enable the displaced person to lease or rent for a period not to exceed four (4) years, a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and public and commercial facilities, and reasonably accessible to his place of employment, but not to exceed the amount allowable under section 204 of the federal act; or

(2) the amount necessary to enable such person to make a down payment (including reasonable expenses for evidence of title, recording fees, and other closing costs incident to the purchase of a dwelling, but not including prepaid expenses) on the purchase of a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and public and commercial facilities. The amount payable under this subsection (2) shall not exceed the amount allowable under section 204 of the federal act and shall be subject to the same matching requirements as under said section.

**History:** En. Sec. 5, Ch. 3, 2nd Ex.  
L. 1971.

**93-9932. Relocation advisory services.** (1) Whenever the acquisition of real property for a program or project of an agency (for which federal financial assistance is available to pay all or any part of the cost) will result in the displacement of any person, the agency shall provide a relocation assistance advisory program for displaced persons which offers the services described in this section. If the acquiring agency determines that any person occupying property immediately adjacent to the real property acquired is caused substantial economic injury because of the acquisition, he may offer such person relocation advisory services.

(2) The relocation advisory service may include such budget, debt management and related counseling services as the acquiring agency determines will assist the displaced person. The relocation assistance program shall include such measures, facilities, or services as may be necessary or appropriate in order to:

(a) determine the need, if any, of displaced persons, for relocation assistance;

(b) provide current and continuing information on the availability, prices, and rentals of comparable decent, safe, and sanitary sales and rental housing, and of comparable commercial properties and locations for displaced businesses;

(c) assist a displaced person displaced from his business or farm operation in obtaining and becoming established in a suitable replacement location;

(d) supply information concerning federal and state housing programs, disaster loan programs and other federal or state programs offering assistance to displaced persons; and

(e) provide other advisory services to displaced persons in order to minimize hardships to displaced persons in adjusting to relocation;

(f) secure the co-ordination of relocation activities with other project activities and other planned or proposed federal or state actions in the community or nearby areas which may affect the relocation program.

(3) In order to prevent unnecessary expenses and duplication of functions and to promote uniform and effective administration of relocation assistance programs, an agency may enter into contracts with any individual, firm, association, or corporation for services in connection with such programs, or may carry out its functions under this act through any federal or state agency having an established organization for conducting relocation assistance programs. Each agency whenever practicable, shall utilize the services of state or local housing agencies, or other agencies having experience in the administration or conduct of similar housing assistance activities.

**History:** En. Sec. 6, Ch. 3, 2nd Ex.  
L. 1971.

**93-9933. Assurance of availability of suitable replacement dwellings.** Whenever the acquisition of real property for a program or project of an agency (for which federal financial assistance is available to pay all or any part of the cost) will result in the displacement of any person, the agency shall assure that, within a reasonable period of time, prior to displacement there will be available in areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and individuals displaced, decent, safe, and sanitary dwellings, as defined by the federal agency concerned with administering the federal financial assistance, equal in number to the number of and available to such displaced persons who require such dwellings and reasonably accessible to their places of employment.

**History:** En. Sec. 7, Ch. 3, 2nd Ex.  
L. 1971.

**93-9934. Relocation costs included in project costs—replacement housing.** The acquiring agency shall include the cost of providing payments and assistance under the provisions of this act in the cost of any project for which federal financial assistance is available to pay all or any part of the cost. The acquiring agency shall also provide the payments and assistance and assure the availability of replacement housing for displaced persons, who are displaced as a result of real property being acquired by an agency and furnished as a required contribution incident to a federal program or project.

**History:** En. Sec. 8, Ch. 3, 2nd Ex.  
L. 1971.

**93-9935. Public assistance eligibility unimpaired—tax exemption of payments.** No payment received by a displaced person under this act shall be considered as income or resources for the purpose of determining

the eligibility of any person for assistance under any state law or for the purposes of determining income under state tax laws.

**History:** En. Sec. 9, Ch. 3, 2nd Ex.  
L. 1971.

**93-9936. Appeal to district court from administrative determination.** Any person aggrieved by final administrative determination concerning eligibility for relocation payments authorized by this act may appeal such determination to the district court of the county in which the land acquired is located.

**History:** En. Sec. 10, Ch. 3, 2nd Ex.  
L. 1971.

**93-9937. Appraisal and negotiation policies—time allowed to move—condemnation proceedings.** An agency which acquires real property for a program or project for which federal financial assistance will be available to pay all or any part of the cost of such program or project shall comply with the following policies:

(1) The agency shall make every reasonable effort to acquire expeditiously real property by negotiation.

(2) Real property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property.

(3) Before the initiation of negotiations for real property, an amount shall be established which it is reasonably believed is just compensation therefor and such amount shall be offered for the property. In no event shall such amount be less than the approved appraisal of the fair market value of such property. Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, shall be disregarded in determining the compensation for the property. The owner of the real property to be acquired shall be provided with a written statement of, and summary of the basis for, the amount established as just compensation. Where appropriate, the just compensation for the real property acquired and for damages to remaining real property shall be separately stated.

(4) No owner shall be required to surrender possession of real property before the agreed purchase price is paid or before there is deposited with the court, in accordance with applicable law, for the benefit of the owner, an amount not less than the approved appraisal of the fair market value of such property, or the amount of the award of compensation in the condemnation proceeding of such property.

(5) The construction or development of a program or project for which federal financial assistance will be available to pay all or any part of the cost of the program or project shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property



shall be required to move from a dwelling (assuming a replacement dwelling will be available) or to move his business or farm operation without at least ninety (90) days' written notice of the date by which such move is required.

(6) If an owner or tenant is permitted to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the acquiring agency on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

(7) In no event shall the time of condemnation be advanced, or negotiations or condemnation and the deposit of funds in court for the use of the owner be deferred, or any other action coercive in nature be taken to compel an agreement on the price to be paid for the property.

(8) If an interest in real property is to be acquired by exercise of the power of eminent domain, formal condemnation proceedings shall be instituted. The acquiring agency shall not intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.

(9) If the acquisition of only part of the property would leave its owner with an uneconomic remnant, an offer to acquire the entire property shall be made.

**History:** En. Sec. 11, Ch. 3, 2nd Ex.  
L. 1971.

**93-9938. Advancement of closing costs and taxes incurred by owner.** Any agency acquiring real property for a program or project for which federal financial assistance will be available to pay all or any part of the cost of the program or project shall, as soon as practicable after the date of payment of the purchase price or the date of deposit into court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is the earlier, reimburse the owner, to the extent the acquiring agency deems fair and reasonable, for expenses he necessarily incurred for recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the acquiring agency; penalty costs for prepayment for any pre-existing recorded mortgage or deed of trust entered into in good faith encumbering such real property; and the pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the acquiring agency, or the effective date of possession of such real property by the acquiring agency, whichever is the earlier.

**History:** En. Sec. 12, Ch. 3, 2nd Ex.  
L. 1971.

**93-9939. Reimbursement of costs when condemnation proceedings abandoned.** Where a condemnation proceeding is instituted by an agency to acquire real property for a program or project for which federal financial assistance is available, and the final judgment is that the real property cannot be acquired by condemnation or that the proceeding is abandoned, the owner of any right, title, or interest in such real property shall be

paid such sum as will, in the opinion of the court, reimburse such owner for his reasonable attorney, appraisal, and engineering fees, actually incurred because of the condemnation proceedings. The award of such sums will be paid by the agency which sought to condemn the property.

**History:** En. Sec. 13, Ch. 3, 2nd Ex.  
L. 1971.

**93-9940. Expenses included in inverse condemnation judgment or settlement.** Where an inverse condemnation proceeding is instituted by the owner of any right, title, or interest in real property because of the alleged taking of his property for any program or project for which federal financial assistance will be available to pay all or any part of the cost of the program or project, the court, rendering a judgment for the plaintiff in such proceeding and awarding compensation for the taking of property, or attorney for the acquiring agency effecting a settlement of any such proceeding, shall determine and award or allow to such plaintiff, as a part of such judgment or settlement, such sum as will, in the opinion of the court or such attorney, reimburse such plaintiff for his reasonable costs, disbursements, and expenses including reasonable attorney, appraisal, and engineering fees, actually incurred because of such proceeding.

**History:** En. Sec. 14, Ch. 3, 2nd Ex.  
L. 1971.

**93-9941. Acquisition of buildings and improvements affected—payments to tenant.** (1) Where any interest in real property is acquired for a program or project for which federal assistance will be available to pay all or any part of the cost of the program or project, the acquiring agency shall acquire an equal interest in all buildings, structures, or other improvements located upon the real property so acquired and which are required to be removed from such real property or which the acquiring agency determines will be adversely affected by the use to which such real property will be put.

(2) For the purpose of determining the just compensation to be paid for any building, structure, or other improvement required to be acquired by subsection (1) of this section, such building, structure, or other improvement shall be deemed to be a part of the real property to be acquired notwithstanding the right or obligation of a tenant, as against the owner of any other interest in the real property, to remove such building, structure, or improvement at the expiration of his term, and the fair market value which such building, structure, or improvement contributes to the fair market value of the real property to be acquired, or the fair market value of such building, structure, or improvement for removal from the real property, whichever is the greater, shall be paid to the tenant therefor.

Payment for such buildings, structures, or improvements as set forth in this subsection (2) shall not result in duplication of any payments otherwise authorized by state law. No such payment shall be made unless the owner of the land involved disclaims all interest in the improvements of the tenant. In consideration for any such payment the tenant shall assign, transfer, and release all his right, title, and interest in and to such

improvements. Nothing in this subsection (2) shall be construed to deprive the tenant of any rights to reject payment and to obtain payment for such property interests in accordance with other laws of the state.

**History:** En. Sec. 15, Ch. 3, 2nd Ex.  
L. 1971.

**93-9942. Duplication of eminent domain payments not intended.** No payment or assistance provided for in this act shall be required to be made by an agency if the displaced person receives a payment required by the laws of eminent domain which is determined by the agency to have substantially the same purpose and effect as such payment under this act.

**History:** En. Sec. 16, Ch. 3, 2nd Ex.  
L. 1971.

**93-9943. New rights and powers not created.** (1) The provisions of section 7 [93-9933] of this act create no rights or liabilities and shall not affect the validity of any property acquisition by purchase or condemnation.

(2) Nothing in this act shall be construed as creating in any condemnation proceedings brought under the power of eminent domain any element of value or damage not in existence immediately prior to the effective date of this act.

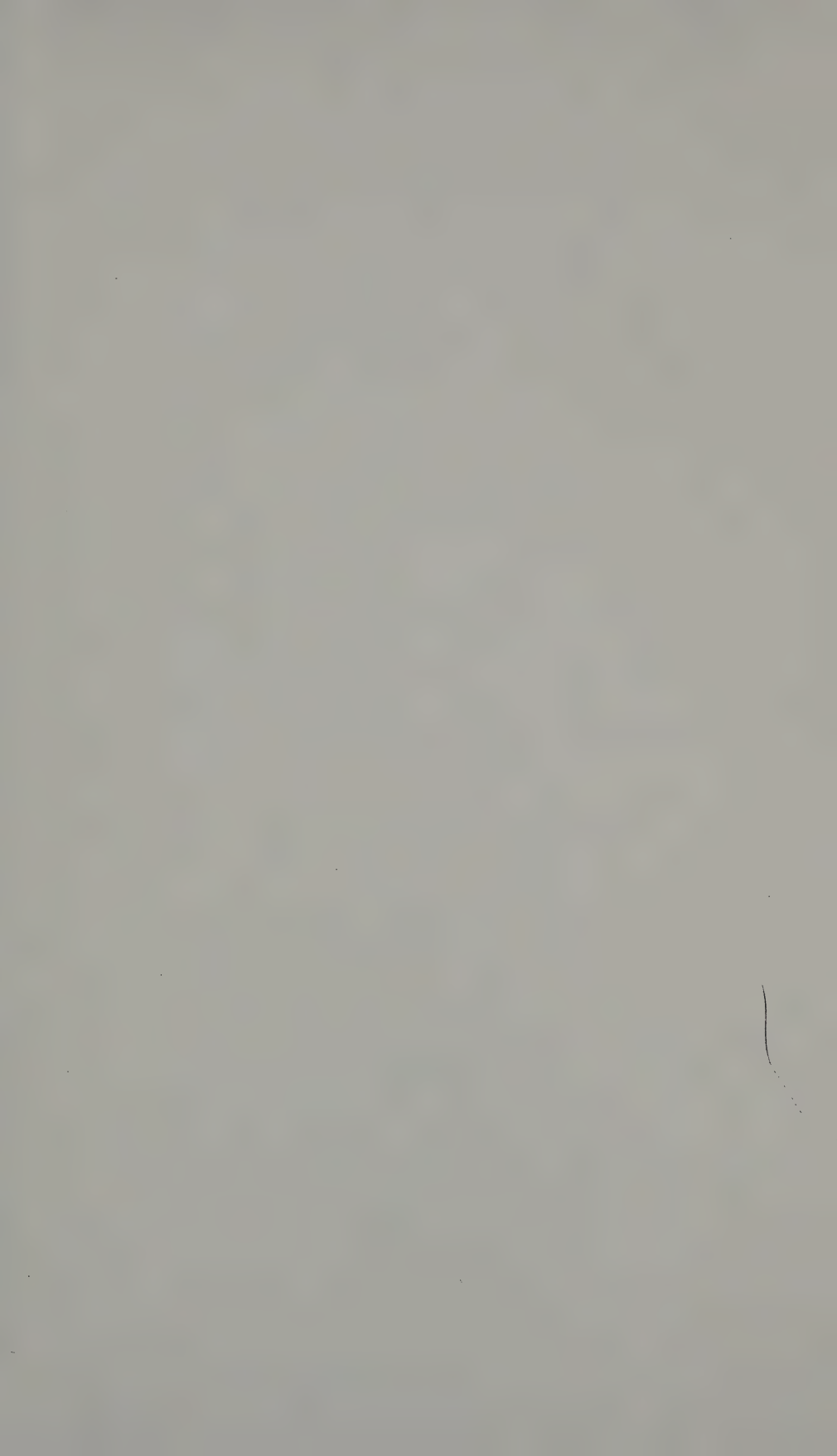
(3) Nothing in this act shall be construed as, directly or indirectly, granting any new or additional power of eminent domain.

**History:** En. Sec. 17, Ch. 3, 2nd Ex.  
L. 1971.

**93-9944. Application to all federally assisted programs.** This act shall apply to all acquisitions of real property by an agency for a program or project for which federal financial assistance is available to pay all or any part of the cost.

**History:** En. Sec. 18, Ch. 3, 2nd Ex.  
L. 1971.























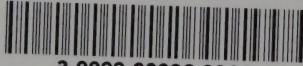
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